WILLIAM SHILLABER

VS.

MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, ET AL.

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UNITED STATES CIRCUIT COURT,

DISTRICT OF MINNESOTA,

THIRD DIVISION.

(In Equity.)

WILLIAM SHILLABER,

Complainant,

vs.

MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, GEORGE T. SIMPSON (SUBSTITUTED FOR EDWARD T. YOUNG) IRA B. MILLS, CHARLES F. STAPLES, AND CHARLES E. ELMQUIST (SUBSTITUTED FOR WILLIAM E. YOUNG.)

Defendants.

APPEARANCES:

HOW, BUTLER & MITCHELL,
Solicitors for Complainant,

EDWARD T. YOUNG, Attorney General of the State of Minnesota,

THOMAS D. O'BRIEN and EDMUND S. DURMENT,
Solicitors for Defendants Railroad & Warehouse Commission, et al.

VOLUME 2.

CHAS. E. OTIS, Master.

GEO. N. HILLMAN, Reporter.

FEDERAL BUILDING, Tuesday, August 25, 1908, the hearing was resumed at 10 A. M.

LEMUEL G. SCOTT,
recalled for further cross-examination, testified:

By Mr. DURMENT:

Q. Mr. Scott, will you turn to your Exhibit 13. This is intended to show the approximate annual loss of passenger earnings of the Minneapolis & St. Louis Railroad Company within the state of Minnesota for the year ending June 30, 1906, it says. According to this statement, what were the total passenger earnings for that road in Minnesota during that year?

A. $307,323; but that is—

Q. That is the total earnings for what?

A. That is an approximation only.

Q. I know, but for what kind of passenger service?

A. Well, that is for the three-cent passenger service.

Q. I know, but for the entire intrastate or all Minnesota traffic?

A. All Minnesota traffic.

Q. Then you mean that all Minnesota traffic or passenger earnings for business done in Minnesota for the year ending June 30, 1906,—

A. No.

Q. —was $307,323?

A. No, sir. That is simply the Minnesota proportion of the one-way passage tickets, tickets sold at the rate of three cents.

Q. What do you mean by "one-way passage tickets"?

A. Tickets sold at the rate of three cents per mile.

Q. Were there other tickets sold that year that were not sold at three cents per mile?

A. Yes, sir.

Q. And they are not taken into account in this—

A. Not in that figure.

Q. I mean in this schedule, Exhibit 13.

A. Yes, sir, they are.

Q. Where?

A. Take the first item, "A."

Q. Now, what is that first item, "A"?

A. That is actual earnings on one-way intrastate tickets sold at three-cent rate.

Q. That means, does it, that those were tickets sold from one station to another in Minnesota at three cents a mile?

A. Yes, sir.

Q. And the total amount received on such tickets for that year was $217,358?

A. Yes, sir.

Q. Now, what is the next item, "B"?

A. It is the total cash collections for the entire line for the whole year, $40,676.38, of which the Minnesota proportion, intrastate, approximately would be $23,999.06.

Q. That means, as I understand it, that for moneys collected for passage between points in Minnesota during that year (that is, collected on the train) there was $23,999.06 for moneys collected for passage between points in Minnesota?

A. Yes, sir.

Q. How did you arrive at that figure?

A. The note at the bottom of that exhibit will explain that fully. I will read it: "On account of cash fares collected by conductors, being but a small proportion of the total earnings, it was not thought advisable to go to the trouble of abstracting the reports made by conductors for the entire year in order to arrive at the actual intrastate business. The actual intrastate business was determined for two representative months, July, 1905, and January, 1906; the intrastate business for those months was 59 per cent of the total collections; therefore, the

use of that per cent for the year in determining the proportion is intrastate." We took two months and picked from off the reports the actual intrastate travel for those two months, and found what per cent that amount was to the total collections made by the conductors, and that per cent was applied into the total cash collections made by conductors on trains for the entire year.

Q. That is, you took two months which you considered average months?

A. Yes, sir.

Q. And you counted the cash received for passage between points in Minnesota during those two months?

A. Yes, sir.

Q. And then you took such proportion of the cash received for the entire system for the whole year as that was of the cash received from the whole system for those months?

A. Yes, sir.

Q. And that gave you 59 per cent of that?

A. Yes, sir.

Q. Now, what does "B," total cash collections $40,676.38, show?

A. It is to show,—that is, the item $1253 is to show the reduction on cash fares collected from interstate passengers.

Q. How is that? Let us see if we are talking about the same thing. You have got a second "B"—"Total cash collections, $40,676.38, Minnesota proportion of total earnings 68.24, $27,757.56."

A. Yes.

Q. "Less intrastate, $23,999.06, Minnesota interstate, $3,758.50." Now explain the item, will you?

A. The $1253?

Q. No, what you got at there and how you got at it.

A. The total cash collections are shown, $40,676.38.

Q. That means, I take it, cash collected on the trains from

passengers for traffic over the entire line during that year?

A. Yes, sir. We have applied 68.24 per cent of that amount in order to arrive at Minnesota's proportion of the total cash collections.

Q. Now, then, how did you arrive at your 68.24?

A. That is the percentage of Minnesota earnings to the total earnings, determined from the annual report for that year to the Railroad & Warehouse Commission.

Q. That is to say, taking the entire system, (the entire earnings,) 68.24 per cent of it was earned in Minnesota?

A. Yes, sir.

Q. So you take that per cent of the total cash collections for the purpose of arriving at Minnesota's proportion of the total cash collections for fares during that year?

A. Yes, sir.

Q. And that gives you $27,757.56?

A. Yes.

Q. Then why do you take this $23,999.06 from it?

A. That is intrastate travel, as determined in the computation just above it.

Q. Oh, that would be, then, $3758.50, that cash was received for interstate travel in Minnesota?

A. Yes, sir.

Q. Now, this item "C," what does that mean?

A. That is the interline ticket sales during the year within Minnesota.

Q. You mean that is the amount of money received for tickets for interstate travel in Minnesota?

A. Interline.

Q. Well, that means interstate, doesn't it?

A. No, not altogether.

Q. What does "interline" mean?

A. Tickets issued by another line and honored by our trains.

Q. That means that there had been through tickets sold by other railroads over their roads to points on your road?

A. Yes, sir.

Q. In which part of the distance was traveled on your road?

A. Yes, sir.

Q. And you received, as your proportion of those through tickets, $224,167.29?

A. Yes, sir.

Q. That was for your entire line?

A. Yes, sir.

Q. And Minnesota's proportion of that was $175,655.12?

A. Or 78.36 per cent.

Q. How do you get the 78.36?

A. The percentage of $224,167.29; I just mentioned the per cent; I thought perhaps you might wish to know.

Q. Well, how did you arrive at this $175,655.12?

A. The second note at the bottom of that exhibit will explain that, also. I will read it: "The interline tickets represent but a small proportion of the ticket sales, and for that reason, together with the amount of work involved in obtaining the actual results, it was thought advisable to work up the actual results for two representative months, and the months of July, 1905, and January, 1906, were used, with the result that Minnesota's proportion of interline ticket sales amounted to $175,655.12." Or, in other words, for those two months the percentage was 78.36, which per cent was applied into the $224,167.29 in order to arrive at the $175,655.12.

Q. Was that all for travel in Minnesota, this $175,655.12?

A. Yes, sir.

Q. And this $3758.50 was all for travel in Minnesota, that is, in "B"?

A. Yes.

Q. And also this $23,999.06 was all for travel in Minnesota?

A. Yes, sir.

Q. And the first item of $217,358 was all for travel in Minnesota?

A. Yes, sir.

Q. Now, were there moneys received by the road during the year 1906 for travel in Minnesota other than these items of $217,358, $23,999.06, $3758.50 and $175,655.12?

A. Yes, sir.

Q. Well, now, then, what other moneys were received by the road during that year for passenger travel in Minnesota?

A. The last item would give those results.

Q. What do you mean by that?

A. The local sales,—that is, sales made by agents of the Minneapolis & St. Louis, where the travel is interstate.

Q. Well, now, then, this actual earnings on one-way passage tickets sold at three cents $450,356.73, what does that cover?

A. That is the one-way passage tickets; that is tickets sold by agents of the M. & St. L. over the entire line.

Q. That is, not only in Minnesota, but elsewhere?

A. Yes, sir.

Q. That means the tickets sold—

A. Yes, sir.

Q. —for passage on your line?

A. Yes, sir.

Q. And sold by your agents?

A. Yes, sir.

Q. Now, when you say one-way, is there such a thing as tickets for two ways?

A. No, there are no return tickets sold now; they are sold at the two-cent rate.

Q. We are talking about 1906, you know. When you say actual earnings on one-way passage tickets sold at three-cent rate, does that mean all tickets sold at three-cent rate?

A. No, sir; it means just simply the local tickets sold by

agents on the M. & St. L.

Q. That is what I mean.

A. Yes.

Q. And it doesn't make any difference whether they were for return trips or round trips or just one way?

A. I don't recall that we sell any round-trip tickets.

Q. Well, at any rate, then, this $450,356.73 would be the moneys received for all tickets sold by the ticket agents of the M. & St. L. road during that year on its line?

A. Classed as a local issue.

Q. Well, that is what I want to get at. Classed as a local issue?

A. Yes; they sell the coupon tickets, you know, and interline.

Q. But classed as a local issue?

A. Yes.

Q. What I want to get at is what you mean by one-way passage tickets in that item there. As I understand, that means tickets sold on your line to be used on your line?

A. Yes, sir.

Q. And it doesn't include tickets sold to be used partly on your line and partly on another line?

A. It does not.

Q. Is that all the tickets sold on your road during that year for such passage; that is, to be used only on your line?

A. At the full rate of three cents.

Q. Oh, at the full rate of three cents?

A. Yes, sir.

Q. Then there were others sold at less than the three-cent rate, were there?

A. Yes, sir.

Q. Minnesota's proportion of this, then, was $307,323?

A. Yes, sir.

Q. But that included intrastate as well as interstate?

A. Yes, sir, the first item.

Q. So that this $307,323 includes the $217,358 item under "A"?

A. Yes, sir.

Q. It also includes the $3758.50 of cash collections?

A. No, sir, it does not.

Q. It doesn't include that?

A. No, sir.

Q. Does it include the item under the head of "B" $23,999.06?

A. No, sir.

Q. Does it include the item $175,655.12?

A. No, sir.

Q. Were these sales of interline tickets under "C" at three cents a mile?

A. No, sir.

Q. Oh, they were not at three cents a mile?

A. No, sir.

Q. They were for less?

A. Averaged about 2½.

Q. Well, these cash collections under "B", were they at 3 cents?

A. Yes, sir.

Q. And the $217,358 under "A", those were at 3 cents?

A. Yes, sir.

Q. And this $89,965 for Minnesota interstate, under the last item there, was at 3 cents?

A. Yes, sir.

Q. Now, if we add to $217,358, the $23,999.06, the $3758.50, the $175,655.12 and $89,965 Minnesota interstate, we will have the total of the passenger earnings of the Minneapolis & St. Louis road for the year 1906 on which the two-cent rate would have called for a reduction?

Mr. BUTLER: On the system, you mean?

Mr. DURMENT: No, no; in Minnesota.

A. Yes, sir.

Q. That includes also a reduction which you would have made, you say, upon interstate as well as state tickets?

A. Yes, sir.

Q. I suppose that is upon the theory not that the law would require you to make that reduction, but that you would feel that you ought to?

A. We would have to, at least, in the territory through which we operate, the states have the two-cent fares, most of the states that we go through.

Q. Oh, they do?

A. Yes, sir.

Q. What states? South Dakota, Iowa and Minnesota?

A. Illinois and Iowa.

Q. Illinois has the two-cent fare?

A. Missouri and the surrounding territory; that is, to points where most of our tickets are sold,—that is, the interline tickets. Take Chicago, for instance, St. Louis, Omaha, Kansas City, points of that kind, the fare is uniform, two cents.

Q. Two cents by law?

A. State regulation, yes, sir.

Q. How long has it been two cents in Illinois?

A. I don't remember the date.

Q. Well, it was for some time prior to the Minnesota two-cent act, wasn't it?

A. They were right close together.

Q. Have you got the dates?

A. I have them at the office, but not here.

Q. I wish you would make a notation to give us the dates when you put in the two-cent rate, or when the law required you to put in the two-cent rate in Illinois, Missouri, Iowa, South Dakota and the other points that you reach.

Mr. BUTLER: Well, the Minneapolis & St. Louis road doesn't go into Illinois or Missouri.

Q. Then what did you mean by the two-cent rate in these states where your line reaches? That your road reached these states and by law you would be compelled to put in the two-cent rate in those places?

A. I don't know as I catch your question, unless it is that if one of our agents is selling a ticket to some point within Missouri he would have to figure the through rate on the basis of the rate that applied in that state.

Q. Oh, yes, But I understood your answer as being that your road, the Minneapolis & St. Louis, reached Illinois and Iowa and Missouri and South Dakota, and that the law required two-cent rates there.

A. No, sir, our line does not reach those states, and if my answer was so construed, I either misunderstood your question or didn't answer it correctly.

Q. These figures here that we say represent the fares upon which your road would have made a reduction in 1906 if the two-cent rate (two-cent passenger act of Minnesota) had been in force, represents not only tickets sold for points on your road in Minnesota, but also represents certain interstate travel between states?

A. Yes, sir.

Q. Now, why would you have made the reduction on the interstate travel as well as the local travel or intrastate?

A. Because of competition with other lines. We cannot apply one rate on one class of business and another rate on another, especially at competing points, and our entire line enters competing territory.

Q. Well, how would the competition have anything to do with local rates in Minnesota?

A. Everything.

Q. Well, just explain, will you?

A. If there is a station on another road within a radius of ten or twenty miles, the people would know that and they would buy their tickets to that station and go overland.

Q. Go overland to that station?

A. To wherever they were going out in the country.

Q. True; if this law were in force there would be the same rate (two cents a mile) on every road in the state of Minnesota as on yours?

A. Yes.

Q. And a point in Minnesota ten miles from your road would not have any advantage of you?

A. It would on interstate traffic.

Q. Why on interstate traffic?

A. Because the passenger would originate in another state, and he would buy his ticket to the nearest point at the cheapest rate.

Q. But unless that point were nearer his destination, it wouldn't make any difference?

A. Yes, it would.

Q. It would be two cents a mile in Minnesota just the same, wouldn't it?

A. It is not practical; you can't do it.

Q. I know you say it isn't practical, but I want to find out whether or not it is and I want to know your reasons for it. That is what I am getting at.

A. Well, it is because the traveling public will buy their tickets to the nearest point at the cheapest rate.

Q. Well, suppose there is a point here in Minnesota on your line and another point on a line say thirty miles from it; a man wants to go from Iowa over to near, say, between these two points; now, as I understand you, you say that the man in Iowa will buy to the station which gives him the cheapest rate through?

A. Yes, sir.

Q. Now, will you explain to me how there would be any cheaper rate from that point in Iowa, to the point on the other road, than on your road if both of you are required to charge two cents in Minnesota?

A. Supposing this road here is interstate and they have a two-cent rate in effect in both states—

Q. Well, no, that is not the proposition. I am asking you why it is that you would be compelled, or see fit, rather, because the law of Minnesota only requires you to change your rate to two cents, to make a change in your through or interstate business or charges for interstate business.

A. We would not, if they were all on the same basis, no.

Q. Well, every road in Minnesota would have to put in the two-cent rate, wouldn't it?

A. In Minnesota, yes.

Q. Well, then, you would be on the same basis in Minnesota as every other road, wouldn't you?

A. So far as Minnesota is concerned, yes.

Q. Then how would you be at any disadvantage outside of the state as against roads in your own state?

A. Well, we wouldn't unless the other road made a cheaper rate in the adjoining state.

Q. Sure; but if the other road made a cheaper rate in the adjoining state, you would have to meet it, I suppose; is that it?

A. Yes, sir.

Q. Well, is it true that the through passenger rates are made up by taking the sums of the locals between two points in interstate business?

A. I don't make the rates.

Q. Well, you ought to know that, though; you made these figures here and are giving them to us. A man who can make these figures here, if they are accurate, ought to know on what they are based.

A. They are based, of course, upon the rates that apply in the states through which the passenger runs.

Q. But that isn't the question I am asking you. The question is are through rates on interstate business made by taking the sums of the locals in the different states between the two points?

A. Not altogether.

Q. As a rule they are not, are they?

A. As a rule I think they are; but, as I say, I am not a rate man, and I don't know how these rates are compiled. I wouldn't endeavor to answer your question so fully as you might prefer.

Q. Then you can't tell us why there would be a reduction in interstate business if the Minnesota two-cent act had gone into effect?

A. I would rather not attempt to answer that.

Q. I am not asking you whether you would rather not, but can you?

A. No.

Q. Now, were there any other receipts in Minnesota for the year 1906 for passengers hauled by the Minneapolis & St. Louis road in Minnesota in 1906, either intrastate or interstate, than you have given us in this Ex. 13?

A. Yes, sir.

Q. What other receipts were there than these included in Ex. 13?

A. All travel less than two cents per mile.

Q. Oh, was there travel less than two cents per mile during that year?

A. Yes, sir.

Q. Do you know how much in the aggregate?

A. No, sir.

Q. Nor how many passengers were carried?

A. No, sir.

Q. You didn't make any figures on that?

A. No, sir.

Q. Why did they carry passengers during that year in Minnesota for less than two cents—less than three cents?

A. Well, our commutation travel to Lake Minnetonka points is less than two cents per mile—was then and is now; then they ran some excursion trains, that they do not or have not been running lately.

Q. Is that all?

A. And half-fares. And at that time the clergymen, if I remember correctly, had a cheaper rate. They didn't include that travel.

Q. And there were a lot who didn't pay anything, too, weren't there?

A. I don't think there were a great many. There would be some, of course.

Q. Did you keep any statistics as to the people carried free during that year?

A. No, sir.

Q. And there would be some interstate traffic, where your share would be less than three cents a mile, not included in this item of $175,655.12, wouldn't there?

A. Yes, sir.

Q. That is, there was some interstate traffic that you carried where you got less than two cents a mile?

A. Yes, sir.

Q. Do you know how much?

A. No, sir.

Q. Then you did carry some interstate traffic where you got at the rate of less than two cents a mile during that year, and you don't know how much?

A. No sir, I do not.

Q. You did carry a number of excursions where you haul-

ed them for considerably less than two cents a mile, you don't know how much?

A. I don't know how much that would be.

Q. And you did carry some ministers at half-fare and don't know how much that would be?

A. No, sir.

Q. And you did carry some people free and you don't know how many there were of those?

A. No, sir.

Q. I show you the report of the Minneapolis & St. Louis road to the State of Minnesota for the year ending June 30, 1906. It appears to have been verified under oath by L. F. Day, vice-president and general manager, and L. G. Scott, auditor,—that is you?

A. Yes, sir.

Q. I find on page 61-A, under the head of Passenger Traffic, in the report for that year, "Number of passengers carried earning revenue, 896,885." That is the number of passengers carried in Minnesota during that year, is it not?

A. Yes, sir.

Q. Including those carried on interstate as well as those carried on intrastate trips?

A. Yes, sir.

Q. That does not include any passengers carried except those who paid fare, does it?

A. That is all.

Q. Those who were carried free, if any, were not included?

A. No, sir.

Q. According to that report, the average receipt per passenger per mile of the Minneapolis & St. Louis road for the year 1906, was one cent and eight and one-fourth mills, wasn't it?

A. Yes, sir.

Q. That is, your entire passenger business in the state of

Minnesota in the year 1906 was done for less than two cents a mile per passenger?

A. Yes, sir.

Q. So in figuring this loss on Ex. 13 you took into account only those cases in which the road had received for passage in Minnesota in the year 1906 more than two cents a mile?

A. Yes, sir.

Q. In making up this Ex. 13 you figured as loss the difference between two cents a mile and what you actually received in Minnesota for the year 1906 for passenger travel in Minnesota on fares at more than two cents a mile?

A. Yes, sir.

Q. You didn't reduce that loss by the amount that would have been received if you had raised the fares received in 1906 at less than two cents a mile to two cents a mile, did you?

A. I don't think that could be determined; it is an uncertain quantity.

Q. Well, you didn't do it, did you?

A. No, sir.

Q. Will you tell me how you are able to determine how much of these various earnings that are referred to in Ex. 13 were received from sales at three cents a mile when you can't determine very well how much was received at less than three cents a mile?

A. In one case we had the actual sales that were made at the three-cent rate, in the other case you don't know whether those people will travel or not if the fare is raised to two cents.

Q. Well, how do you know that these same people will travel anyway?

A. The fact that they did and paid the three-cent rate would indicate that they traveled.

Q. Well, the fact that the others did and paid the other rate indicates that they traveled, doesn't it?

A. Yes, sir.

Q. Can you tell from your books how many people you carried during the year 1906 at less than two cents?

A. Oh, it can be done.

Q. But you didn't determine that?

A. No sir, because of its uncertainty.

Q. But it would be just as easy to determine it as the other, wouldn't it?

A. Oh, yes, sir.

Q. But you figured that anybody who paid three cents had to go?

A. Yes, sir.

Q. And that the fellow who didn't pay three cents wouldn't have to go?

A. He traveled because it was a special inducement.

Q. And what was the special inducement?

A. A low rate.

Q. Well, that would depend also upon the distance he had to travel, wouldn't it?

A. Not altogether. An excursion rate is usually made very low, and the same amount in total will be made between a number of stations in order to get together a large crowd.

Q. What portion of your traffic in Minnesota for the year 1906 was carried at less than two cents?

A. I didn't compile that.

Q. During that year a very large part of your passenger revenue in the state of Minnesota was from passengers which you carried for less than two cents a mile, was it not?

A. I couldn't say as to the part, but we did run excursions (then we ran a number of picnics, to illustrate,) to nearby points and to far-away points, that we get none of that business this year nor now.

Q. Well, why not this year?

A. Because they have not been running them making them the special rate; there is no travel of that character.

Q. Well, you haven't made any travel, you haven't run special trains this year?

A. No, sir.

Q. None of the roads have, because they have been afraid it would affect this litigation, we all understand that.

A. Well, I didn't.

Q. Well, it is pretty well known. But you did run a great many excursion trains in 1906, didn't you?

A. I couldn't say as to the number. We did run them. I couldn't say as to the number but I know we did run excursion trains and we ran them on Sundays, picnic excursions.

Q. Your road sought that class of business that year, didn't it?

A. They did have that kind of business.

Q. Well, they were not compelled to take it, they went after it, didn't they?

A. Oh, certainly.

Q. They wanted it?

A. Yes.

Q. I suppose they would not have done it unless they considered it profitable.

A. I should not think so.

Q. And your road has advertised a rate of less than two cents to the State Fair this year, hasn't it, now?

A. I couldn't answer positively. I have read accounts in the newspapers and that is as far as I know.

Q. Is it not true, Mr. Scott, that if you take from your total passenger earnings for the year 1906 in Minnesota the sum of this $217,358, the $23,999.06, the $3,758.50, the $175,655.12 and the $89,965, it will leave you the amount received in Minnesota in that year for passengers carried at less than two cents a mile?

A. Yes, sir.

Q. Will you give us that total?

A. $510,735.68.

Q. The total passenger earnings for that year were $769,119.25, weren't they?

A. No, sir. That includes express and mail.

Q. Then the total amount received for the year 1906 for the carriage of passengers in Minnesota was what?

A. $666,523.43.

Q. Now, tell us how much of the money received for the carriage of passengers in the year 1906 was for passengers carried at less than two cents a mile.

A. $155,787.75. This is the amount received for carriage of passengers at two cents a mile or less.

Q. More than twenty per cent?

A. Yes sir. I can give it to you exactly (Figuring.) About 23 per cent.

Q. Then 23 per cent of the earnings from passenger travel in Minnesota in 1906 was from passengers who paid two cents a mile or less?

A. Yes, that is right; two cents a mile or less.

Q. Can you tell what number of passengers, if any, were carried in the year 1906 at two cents a mile—just?

A. I could do it, yes sir, by going through the records.

Q. How could you tell?

A. Taking all the reports and going through them.

Q. Isn't it true, as a matter of fact, that during the year 1906, there was no passenger carried at two cents a mile except it might have been a mere accident,—there was no established rate at any time of two cents?

A. No, there was no established rate of two cents.

Q. Isn't it true that substantially all of this $155,000 odd received for carrying passengers at two cents a mile or less was received for carrying passengers at less than two cents a mile?

A. I wouldn't want to answer that in that way because the rate received for those passengers would be scaled from two

cents down and maybe two cents, or a fraction below two, and on down to one cent.

Q. Yes, it may be, but as a matter of fact was there any in at two cents?

A. I couldn't answer that positively; I presume there was.

Q. Isn't it a matter of fact that the great bulk of that was made up of fares at about a cent and a half?

A. I should say yes to that; yes.

Q. And some of those passengers were carried for less than a cent and a half, weren't they?

A. Yes, sir.

Q. Were any of them ever carried as low as a cent a mile?

A. Yes, sir.

Q. Any of them less than a cent a mile?

A. I think so,—the commutation travel to Lake Minnetonka points.

Q. Would be less than a cent a mile?

A. To some points, yes sir.

Q. And many of the excursions were run at between the cent and cent and a half, weren't they?

A. I presume so.

Q. And a great many of them as low as a cent and a half a mile?

A. Yes, sir.

Q. Now, on this Ex. 13 here do these figures $217,358 and the $175,655.12 in "A" and "C" of Ex. 13 represent the cash actually received by your road during that year for those matters, or does it include the commissions paid brokers for selling?

A. This is the actual cash received for the sale of the tickets.

Q. That is, received by whom?

A. Agents of the Company.

Q. And all turned in to the Company?

A. Yes, sir.

Q. And was anything paid out of it to those agents on account of those sales?

A. Any salaries?

Q. Anything in the way of commissions?

A. I don't recall any. Very small if there was anything of that kind.

Q. I suppose your books will show it if there was?

A. Yes, sir.

Q. I will ask you to make a statement for us showing what was paid out by the Minneapolis & St. Louis road, either by way of commissions or brokerage or other compensation—

Mr. BUTLER: You don't mean salaries, do you?

Mr. DUCHMENT: I don't mean regular salaries of your regular employes. For the sales which produced that $217,558 and the sales which produced that $175,655.12 or any part of either.

A. Yes, sir. The deductions from revenues is what you are getting at?

Q. What I want to get at is how much you paid out of that to get the business that it represents.

A. Yes, sir.

The MASTER: That is, the difference between the gross receipts and the actual receipts for the sale of the tickets, I suppose.

WITNESS: I understand what is wanted.

Q. My question asking for the expense of procuring the business represented by these ticket sales on Exhibit 13, of course, is not to include the salary of your regularly employed agents, who represent your line on a salary and do business upon your line, but it is to include any commission or other compensation paid to agents of other roads, on other lines, for routing travel over your line instead of others.

A. Yes. I was going to say that we have some salaries at very small points where they are based upon a commission, but

that is in lieu of a stated amount per month, and you would not want that?

Q. That is, an agent on your own line?

A. Yes, sir, as I understand the question. That practice was formerly in vogue and I do not know whether it was in vogue during this particular period or not, but it was discontinued by all roads here a few years ago—the practice of paying agents of foreign lines a commission upon what we called coupon-ticket sales. That practice was discontinued, and I believe prior to this year, but I will be able to determine that.

Q. Will you turn to your Exhibit 11. I find "passenger revenue only, Minnesota, $620,425.20, less operating expenses and taxes, $552,452.47, earnings $67,972.73." That, I understand, is the total receipts from passengers carried in Minnesota in the year ending April 30, 1908, who paid fare whether they were interstate or intrastate journeys?

A. Yes, sir.

Q. If there were any people carried without compensation, they were not included, they would not yield any revenue, and nothing would be in this item on account of them?

A. No, sir.

Q. It would neither be increased nor diminished by reason of that fact?

A. No, sir.

Q. You say "Less operating expenses and taxes,"—what taxes do you mean? What taxes were included in this item of $552,452.47?

A. The 4 per cent tax; at that time it may have been 3.

Mr. BUTLER: No, 4 in that year, in Minnesota.

Q. That was a gross-earnings tax then?

A. Yes, sir.

Q. On the gross revenue from passengers?

A. Yes, sir.

Q. What would be included in the "operating expenses" in that item of $552,452.47?

A. The expenses of maintaining ways and structures, as the classification calls for it, which means the track and building expense; the maintaining of equipment, transportation and traffic expenses and administration expenses, usually termed "general."

Q. I also notice here in the next column of figures below, "Passenger train revenue from all sources, $734,874.87." What does that include beside the fares collected from passengers for travel?

A. Revenue received from hauling the U. S. mail, express and passenger proportion of revenues, classed as such, that are neither freight or passenger. In other words, we have put in there passenger proportion of revenues. There are revenues of a miscellaneous nature.

Mr. BUTLER: Does it include excess baggage of passengers, also?

WITNESS: That, of course, we know, but then there are some items of revenue that are neither passenger nor freight or that can be construed as such.

Q. What, for instance?

A. I was trying to localize them. Of course, we have the revenues from these agents on the line that would be put into passenger revenues.

Q. That is, news-agents?

A. Yes; also excess baggage.

Q. That is about all, isn't it?

Mr. BUTLER: Dining-car and buffet?

WITNESS: Anything in connection with passengers would be passenger revenue, but I was under the impression that there were a few miscellaneous revenue items that we gave passenger revenues its proportion but on the spur I don't recall them.

Q. Then in the year ending April 30, 1908, there was $114,449.67 revenue earned by passenger trains from other sources than fares of passengers?

A. You are confining it to Minnesota alone?

Q. Yes.

A. $114,449.67.

Q. I notice that in arriving at the amount of earnings on passenger traffic for the year ending April 30, 1908, in order to get the net earnings at $67,972.73 you deduct the entire operating expense and taxes from the amount received from sale of tickets or from carriage of passengers and not from the gross revenue. Why is that?

A. That $552,452.47 represents the portion of expenses assignable to the earning of passenger revenue.

Q. What do you mean by passenger revenue?

A. Revenues from passenger earnings.

Q. On passenger-train earnings?

A. Yes.

Q. And not simply from the sale of tickets?

Mr. BUTLER: Mr. Durment, it is done both ways on the face of that statement, isn't it?

Mr. DURMENT: Well, apparently not.

A. This is the entire expense.

Q. Then what I want to ask you is this: In arriving at the earnings from "passenger revenue only" why didn't you apportion to that only its share of the expense instead of all the expense of running the passenger trains, which makes in addition to the $620,425.20 an earning of $114,449.67?

A. We do not keep that portion of the expense in connection with the earning of mail and express revenue separate. I don't know of any roads that do, and in compiling this statement I have put the total expenses against each set of results, as the exhibit shows.

Q. As a matter of fact, the $552,452.47 represents the tax-

es and the expense of earning the $114,449.67 of revenue from other sources than passengers?

A. Yes, sir.

Q. As well as the passenger earnings?

A. It does.

Q. Then if you would apportion those taxes and the expenses as between the $620,425.20 received from passengers and the $114,449.67 received from other sources, it would very largely increase the passenger earnings, wouldn't it?

A. It wouldn't make very much of a difference.

Q. The rate of tax is the same on the $114,449.67 as upon the other, that is, 4 per cent?

A. Yes, sir.

Q. Now, you don't keep any separate account of the expenses, do you, of earning these other matters?

A. No, we do not.

Q. Now, then, if you apportion these upon the basis of the earnings, what will it give us?

A. We could figure it.

Q. Will you tell us now?

A. I couldn't do it now.

Q. You have got here this figure of $620,425.20 received from passengers?

A. Yes, sir.

Q. You have got $114,449.67 received from other sources, haven't you?

A. Yes, sir.

Q. Now, it has cost you to earn that, in the way of taxes and operating expenses, $552,452.47.

A. It was 3 per cent then, you know. You have got one figure too many. Of $114,449.67 one per cent would be only $1,144.

Q. We are not taking any one-per cent proposition. We will get at it this way. You say in order to earn this $734,874.-

87 it cost you $552,452.47?

A. Yes.

Q. What per cent of expense would that be?

A. About 75 per cent.

Mr. BUTLER: That is on the total earnings?

Mr. DURMENT: Yes, that is on the total earnings.

Q. Then if the expense of earning this $734,874.87 is about 75 per cent. of the amount, the profits, of course, would be 25 per cent. Now, upon that basis what would be the net earnings or profits on the $620,425.20 received from passengers for the year ending April 30, 1908?

A. About $155,106.30.

Q. Then upon the figures of this Exhibit 11, if you apportion to expense between the passenger revenue and the total revenue of passenger trains, it would give you earnings on the passenger revenue of $155,106.30 instead of $67,972.73, wouldn't it?

A. Yes, sir.

Recess until 2 P. M.

AFTERNOON SESSION.

A. It appears from your examination this morning, Mr. Scott, in connection with Ex. 13, that you figured what would have been the loss on June 30, 1906, on applying the two-cent rate to your business done in the year ending June 30, 1906, where you had charged a greater rate than two cents, and it also appeared that you had carried a large number of passengers for less than two cents, some as low as one cent and some as low as a cent and a half, and perhaps some for less than a a cent per mile, and that in that year the average rate per mile for passengers carried who paid fare was 18.25 mills; that was 18¼ mills for passengers carried in Minnesota, was it not, or was that for the entire line?

A. That is in Minnesota.

Q. That was in Minnesota?

A. Yes, sir.

Q. Can you tell what was the average per mile for each passenger carried for pay over your entire line in that year, from the same report?

A. 19.67 mills.

Q. Now, is it not true that for most of the years, for seven or eight years prior to the commencement of this action, your road had carried its passengers each year, both those carried in Minnesota upon the Minnesota business alone and those on the interstate business (that is, on the entire line) for less than two cents a mile on the average?

A. I don't remember that average rate, but I think that would be true. If the reports are here they would show it.

Q. I show you a report of your road for the year ending June 30, 1907, and ask you to state the average rate per mile paid by passengers who paid fare during that year for the passengers carried in Minnesota alone; then state also the average rate for passengers carried over your entire line.

A. In Minnesota 18.26 mills.

Q. How much of that period, if you remember, was the two-cent-rate law in effect?

A. One month. The entire line, 19.27 mills.

Q. What was the average for Minnesota and also for the entire line for the year ending June 30, 1905?

A. In Minnesota, 17.34 mills; entire line, 18.88 mills.

Q. The same thing for the year 1904.

A. In Minnesota, 18.18 mills; entire line, 19.40 mills.

Q. For the year ending June 30, 1903.

A. Minnesota, 19.99 mills; entire line, 20.34 mills.

Q. For the year ending June 30, 1902.

A. Minnesota, 19.65 mills; entire line, 20.69 mills.

Q. For the year 1901.

A. Minnesota, 19.33 mills; entire line, 20.16 mills.

Q. For the year 1900.

A. Minnesota, 19.44 mills; entire line, 20.22 mills.

Q. 1899.

A. Minnesota, 19.24 mills; entire line, 19.86 mills.

Q. 1898, ending June 30th.

A. Minnesota, 18.39 mills; entire line, 19.05 mills.

Q. Take your exhibits 9 and 11, will you. On Ex. 11 you have the operating expenses and taxes for the year ending April 30, 1908, as $552,452.47. On your Ex. 9 it shows that that is made up of $518,636.28 for operating expenses, and $33,816.19 for taxes. How do you arrive at that figure for taxes?

A. That is 4 per cent. upon the gross revenues.

Q. For that year?

A. Yes, sir.

Q. That would be 4 per cent., then, on $620,425.20, or 4 per cent. upon $734,874.87?

A. On the latter amount.

Q. It appears from Ex. 11 that that is the tax upon the earnings of passenger trains, $734,874.87.

A. There would be some other revenue that would not be earned on passenger traffic for which the taxes were paid.

Q. You said that before; I would like to know what item.

A. Well, storage on baggage would be one, at a station, and there may be others that I can't recall, but I know that there is that item.

Q. Well, it is all incident to the operation of the passenger trains and the carrying of passengers and the things that are carried on passenger trains?

A. Yes, sir.

Q. Now, have you here the details showing the sums of the various classes of items which go to make up this $518,636.28 operating expenses? if so, I would like to see it.

A. That detail is very voluminous, large records. No, sir

I wouldn't have that here.

Q. You have it at the office?

A. Oh, yes; this can all be verified.

Q. Will you produce that to-morrow morning?

A. I couldn't do that. There are some of those books, before opening them up, as wide as this table.

Q. Can you produce a detail summary?

A. Yes, but not tomorrow morning, because this period is an odd period, and the months would have to be added together, but we can furnish you by detail.

Q. I will ask you, then, to produce and furnish us with what you speak of as a detail summary which will show the sum of each class of items that is included in this item of $518,636.28 operating expenses.

A. Oh, yes, we can give that very easily.

Q. And will you also produce a similar detail summary of the operating expense of 1907 which is carried on this Ex. 9 at $512,682.16?

A. Yes, sir.

Q. I notice from your Ex. 9 that the cost of passenger operation or operating expenses for passengers in Minnesota is $5,954.12 more than the operating expense for the year ending April 30, 1907, though your income was considerably less from that source, as you have shown by some other statements.

A. Yes, sir.

Q. Can you tell us what items make up that increase in operating expense?

A. Yes, sir.

Q. What?

A. This same detail schedule statement will show that information.

Q. I notice on Ex. 9 that your operating expenses in Minnesota for freight was $1,107,916.35, for the year ending April 30, 1908, and that your taxes charged to that is $72,223.92. I

suppose that tax is 4 per cent. upon your gross freight earnings for that year?

A. Yes, sir.

Q. I notice that your operating expenses for freight in Minnesota for the year 1907 was $1,042,296.48, showing an increase of operating expenses in Minnesota in the year 1908 over the year 1907 for freight traffic of $65,619.87.

A. The first amount you quoted there $1,042,000, what year was that?

Q. Ending April 30, 1907.

A. Correct.

Q. Can you state what that increase consists of?

A. The same statement will give you that also.

Q. Then will you produce for us detail summaries of the operating expenses for the year ending April 30, 1908, as shown on that exhibit, and also a like detail summary for the operating expenses for freight shown on that exhibit for the year 1907, for Minnesota?

A. Yes, sir.

Q. Turn to Ex. 10, please. Under the head of "Freight Statistics" for the year ending April 30, 1908, in Minnesota, there is "1,748,259." That means the number of tons of freight carried in that year?

A. Yes, sir.

Q. Without reference to the distance carried?

A. Yes, sir.

Q. And under the year ending April 30, 1907, "1,856,098." That is the gross tons carried in the year 1907, which ends at that period?

A. Yes, sir.

Q. And on the right-hand side of that same column of figures "Tons One Mile"; the year ending April 30, 1908, "181,576,276". That means that that many tons of freight were carried one mile in Minnesota in that year?

A. 1,748,259 tons; they were carried that many miles.

Q. Yes; that is, it would be the equivalent of one ton carried that many miles?

A. Yes, sir.

Q. The total traffic?

A. Yes.

Q. And under the year ending April 30, 1907, I find "177,253,938." That means that the 1,856,098 tons carried in 1907 is the equivalent of 177,253,938 tons carried one mile in Minnesota?

A. Yes, sir.

Q. Now, below on the same exhibit, I find under the head "Freight Revenue from Movement of Freight Only" for the year ending 4/30/08, $1,629,834.27. I suppose that means that is the gross freight received for the tonnage, or the tons of freight hauled in Minnesota during that year?

A. The revenue, yes, sir.

Q. I mean just from the freight charges, though.

A. Yes, sir.

Q. And under the year ending April 30, 1907, it appears the gross freight charges received for hauling the tonnage which is above shown to have been hauled in the year 1907 in Minnesota, the gross receipt $1,676,315.41?

A. Yes, sir.

Q. Can you tell us what was the average rate per ton per mile for that freight hauled in 1908 in Minnesota and also for that hauled in 1907 in Minnesota?

A. Yes, sir.

Q. Will you do so, please?

A. In 1908, as I figure it here, it is 8.9 mills per ton per mile; and, for 1907, 9.4 mills per ton per mile.

Q. That is, in Minnesota?

A. Yes, sir.

Q. Now, your figures here on Ex. 10, will they enable you

to give the rates received on the entire line? I mean the percentage in the same way.

Mr. BUTLER: The rate per ton per mile?

Mr. DURMENT: The rate per ton per mile.

A. In 1908, 10.91 mills; in 1907, 11.05 mills.

Q. Those figures, of course, are for the years ending April 30, 1908, and April 30, 1907, as shown on Ex. 10?

A. Yes, sir.

Q. Now, for the year ending June 30, 1907, tell us what was the rate per ton per mile received upon all freight in Minnesota and what was the rate per ton per mile for freight over the entire line as shown by the report to the State of Minnesota verified by you.

A. Minnesota, 9.51 mills; for the entire line, 11.23 mills.

Q. Do you know how much of the period covered by that report the merchandise rates were in effect in Minnesota,—the rate prescribed by the order of the Commission of November 15, 1906, to June 30, 1907, the merchandise rates made by the order of the Commission which are in dispute in this case?

A. Seven and one-half months.

Q. Will you give us the rate per ton per mile received for freight in Minnesota, and the rate per ton per mile received for freight from the entire line for the year ending June 30, 1906, by your road?

A. Minnesota, 10.12 mills; entire line, 11.15 mills.

Q. The same for the year ending June 30, 1905.

A. Minnesota, 10.08 mills; entire line, 10.98 mills.

Q. The year ending June 30, 1904.

A. Minnesota, 10.56 mills; entire line, 12.17 mills.

Q. For the year ending June 30, 1903.

A. Minnesota, 12.08 mills; entire line, 12.38 mills.

Q. For the year ending June 30, 1902.

A. Minnesota, 12.10 mills; entire line, 12.35 mills.

Q. For the year ending June 30, 1901.

A. Minnesota 11.50 mills; entire line, 11.45 mills.

Q. For the year ending June 30, 1900.

A. Minnesota, 12.43 mills; entire line, 12.12 mills. (We were making money.)

Q. For the year 1899.

A. Minnesota, 12.20 mills; entire line, 11.90 mills.

Q. For the year ending June 30, 1898.

A. Minnesota, 11.94 mills; entire line, 11.71 mills.

Q. According to Ex. 16, which you have introduced here, your average haul on merchandise for each ton hauled for the year ending March 31, 1907, was 73.98 miles?

A. Yes, sir.

Q. Under the Commission's order of September 6, 1906, fixing the merchandise rates, and which were in effect, as you say, for seven and a half months in the year 1907, the rate for that haul of 73.98 miles for Class E, which is the lowest class, would be 5.14 cents, would it not?

A. Yes, sir.

Q. How much is that per ton per mile?

A. 13.71 mills.

Q. Now, if you will, turn to Ex. 10 and tell us how much would have been the gross revenue for freight for the year ending April 30, 1908, if you had taken 13.71 mills per ton per mile.

Mr. BUTLER: That is, if it had all been Class E, hauled 75 miles?

Mr. DURMENT: Yes.

Mr. BUTLER: Hauled 75 miles, under the Commission's order?

Mr. DURMENT: Yes.

A. In Minnesota, or our entire line?

Q. Take Minnesota, to start with.

A. $2,489,410.74.

Q. And you actually received for that year for the freight

hauled $1,629,834.27, in Minnesota?

A. Yes, sir.

Q. A difference of $859,576.47, isn't it?

A. Yes, sir.

Q. That is to say, that if in the year 1908 you had charged at the rate per ton per mile which the order of the Commission would have produced upon the lowest class of merchandise covered by its order for the average haul for the year ending March 31, 1907, your income or gross income from freight would have been $859,576.47 greater than it was for freight hauled in Minnesota?

A. Yes, with one correction, that where you state the "year 1908," that should be the "year ended April 30, 1908."

Q. Will you figure and tell us from Ex. 10 that if all the freight hauled in Minnesota for the year ending April 30, 1907, had been carried at the rate of 13.71 mills per ton per mile, being the rate per ton per mile which would have been received under the order of the Commission for the lowest commodity or class of merchandise covered by its order, for the average haul of merchandise carried for the period covered by your Ex. 16, how much greater would have been the receipts for freight carried in Minnesota than they in fact were as shown by your Ex. 10?

A. $753,836.07.

Q. Now, if we take the commodity rate act on soft coal, which would be the lowest rate fixed by that act for the same distance, 73.98 miles, which would be under that act 75 miles, it would be 72 cents a ton, would it not, for the 75-mile haul?

A. Yes.

Q. How much per ton per mile would that be?

A. 9.6 mills per mile.

Q. What would be the difference in the income of the road, in Minnesota, for freight for the year ending April 30, 1907, if it had charged 9.6 mills per ton per mile instead of the

price it did charge; that is, that price for freight hauled in Minnesota?

A. $5.22.39.

Q. Greater or less?

A. Greater.

Q. In your reports to the state which we have called attention to, in which you have shown the average rate per ton per mile for the state on freight and the average rate per ton per mile for the freight hauled on all your lines, I suppose you arrived at it by taking the total of all freight receipts for all classes of freight in the state and dividing it by the tonnage?

A. By the ton miles.

Q. By the ton miles?

A. Yes, sir.

Q. And you got your ton miles how?

A. According to the actual movement of freight.

Q. That is to say, of all classes of freight?

A. Yes, sir.

Q. Then your average, both as to the state rate and as to the interstate rate, is arrived at by lumping all freight of all classes and all sums received for it?

A. Yes, sir.

Q. Of course, in arriving at the average for the state you include all freight hauled in the state, whether it is a part of interstate haul or purely local to the state?

A. Yes, sir.

Q. Turn to Ex. 16, please. On that exhibit you have given us the average number of miles hauled of each ton of merchandise between April 1, 1906, and March 31, 1907, in the state of Minnesota, have you not?

A. Yes, sir.

Q. Now, how did you arrive at that?

A. From the way-bills.

Q. Well, just tell us your process by which you arrived at this.

A. We abstracted from the way-bills the tonnage and the freight assessed or freight collected.

Q. How would that give you the average of the miles hauled?

A. We abstracted it according to the amount of the shipments from and to the stations between which the freight was hauled.

Q. The total tonnage you have given us here on that exhibit, of all classes, was 90,527,572, was it not?

A. Yes, sir.

Q. Now, how can you take the figures which are given on this Ex. 16 and get your average of miles hauled?

A. We have the detail which shows the number of tons hauled and the number of miles.

Q. Well, you have that number of tons hauled on this schedule Ex. 16, haven't you?

A. But the statement does not show both the number of tons and the number of miles that tonnage was hauled.

Q. Oh. Then you have the number of miles that tonnage was hauled in your detail, have you not?

A. Yes, sir.

Q. Can you give it to us now?

A. Yes, sir.

Q. What was the number of miles tonnage shown in Ex. 16 was hauled?

A. 3,348,776 ton miles.

Q. And you arrive at your 73.98 average haul by dividing the ton miles by the number of tons?

A. Yes, sir; which are 45,263.78 tons.

Q. Then how did you get your 73.98 miles?

A. By dividing the number of tons, 45,263.78 tons, into the ton miles, 3,348,776.

Q. I confess I don't understand where you get your 45 million tons.

A. This is in pound merchandise, and divided by 2,000 will give you the tons.

Q. This heading "Tonnage" means pounds and not tons?

A. Yes, sir.

Q. This is hundred weight instead of pounds?

A. Yes, sir,—well, no, it would be that many pounds; divided by two thousand pounds per ton.

Q. I understand that on Ex. 10 you don't give us the tonnage, nor any of the figures as to the local hauls, but you include in all of them the local hauls, and the interstate hauls in Minnesota, too?

A. Yes, sir.

Q. Have you anything from which you made up that statement which will show us what of those figures in Ex. 10 refer to strictly local hauls and what to interstate hauls?

Mr. BUTLER: You mean with respect to the earnings or operating expenses?

Mr. DURMENT: On this Ex. 10 I mean with respect to tons hauled and the receipts.

A. No, sir, we didn't work that up.

Q. Then you haven't any information at present as to how much of these totals of tonnage and earnings shown in Ex. 10 was for business local to Minnesota?

A. No, sir.

Q. And I suppose you haven't, then, any information as to what portion of the Minnesota business was made up of the various classes of freight?

A. No, sir.

Q. Take again your Ex. 16. It appears from that, that for the year ending March 31, 1907, you received a total of $170,626.93 for hauling 90,527,572 pounds an average haul of 73.98 miles. Tell us, will you, what was the rate per ton per

mile received by you for hauling that merchandise shown on Ex. 16?

A. We didn't actually receive $170,626.93.

Q. Oh. What did you receive?

A. That total covers a period of a year six months prior to the date that the class rates went into effect and six months subsequent thereto, and on the six months prior to the date it went into effect we applied the new or the merchandise rates that went into effect on that date into the results, and for the period of six months subsequent we applied the old rate. I mean that in the first column here we have taken the business that actually moved and applied the old rates for the whole year, but during the period we did collect the old rate, so that the total does include for the period the revenue at the old rate, but for the latter period we have applied the old rate during the latter six months. The second column represents what we would have received and the tonnage that moved if the new rates had been in effect during the entire year, but, of course, they were not. They were only in effect for a half a year.

Q. Then you didn't receive that entire sum of $170,626.93?

A. No, sir.

Q. But that is what you would have received during that period if the commodity rates had not gone into effect?

A. If the class rates hadn't.

Q. If the class rates hadn't gone into effect?

A. Yes, sir.

Q. Well, then, how much would that have been per ton per mile?

A. 50.95 mills. This is under the old rates. Under the new rates, 40.98 mills.

Q. Under this first heading here on Ex. 16, "Charges assessed at former rates," you have given us the amount which would have been received upon the merchandise actually carried in Minnesota between Minnesota points during the period

covered by that exhibit, although in fact you only received those rates for the first six months of that year?

A. Yes, sir.

Q. And the last six months you received the lesser rates of the merchandise order?

A. Yes, sir.

Q. And in this second column here "Charges assessed at present rates," you have given us the amounts which would have been received upon the business actually done in carrying merchandise between points in Minnesota if you had applied to that business the rates fixed by the Commission's order, although in fact during six months of that period you charged higher or other rates, but during the latter six months of that charged the Commissioners' rates?

A. Yes, sir.

Mr. BUTLER: So then, as I understand it, the whole year's tonnage has applied to it, first, the old rate, and second, the new rate?

WITNESS: That is it.

Mr. BUTLER: And the difference between the two indicates the loss, on the basis of tonnage and of rates?

The MASTER: That is what he is intending to show.

Q. You were to produce a statement here showing the various amounts of cash received from bonds and sales of stock from the organization of the road to the present time. Have you that ready?

A. I have here a statement of the bonds issued by the Minneapolis & St. Louis Railroad Company since the reorganization, showing the dates they were issued and the purpose of the issue. That was one statement you asked for. I have that.

Q. I am asking now about another. You were asked to produce a statement here showing the amount of money received from sales of stock and the amount of money received from sales of bonds, from the time of the organization of the

original company to the present time; that is the one I want now.

A. I have the figures here, in pencil, which I will hand to you. I can have them drawn off on typewriter.

Adjourned until the morning of Wednesday, August 26th.

FEDERAL BUILDING, St. Paul, Minn., Wednesday, August 26, 1908, the hearing was resumed at 10 A. M.

LEMUEL G. SCOTT,
recalled for further cross-examination, testified.

By Mr. DURMENT:

Q. I call your attention to Exhibit 17. This exhibit is a "statement showing tonnage and earnings on merchandise and carload shipments moving at various class rates from Minnesota stations to Minnesota stations, the loss in revenue, percentage of loss in revenue and average distance hauled for the month of October, 1907." As I understand it, the figures under the head "Tonnage" in that first column opposite each class is a statement of the number of pounds of that class of freight which was hauled by the Minneapolis & St. Louis road between points in Minnesota in the month of October, 1907?

A. Yes, sir.

Q. That includes only intrastate hauls?

A. For the merchandise, of course, that was affected by the new class rates that went into effect in November, 1906; it does not include the tonnage of merchandise shipments that were not affected by that table of rates.

Q. Well, of course. I ought to have made that clear. For instance, I find under the first column in this exhibit the word "First class"; that is under the heading "Class"?

A. Yes, sir.

Q. Under the heading "Tonnage," which is the first column

of figures, and opposite "First class," I find 1,022,001. As I understand it that 1,022,001 is the number of pounds of freight of the first class, according to the Commission's order, which was actually carried in Minnesota, between points in Minnesota, in the month of October, by your road?

A. Yes, sir.

Q. It does not include any merchandise except such as was First class under the Commission's order?

A. That is right.

Q. Nor does it include any merchandise of the kind included in the First class of the Commission's order which originated outside of the state and was shipped into the state, or which originated in the state and was shipped out of the state, or which passed through Minnesota from one outside state to another outside state?

A. It does not.

Q. And this second column of figures here is the amount that would have been received by the road if it had charged the rates which were in existence before the Commission's order was made?

A. Yes, sir.

Q. And the third column of figures is the amount which was in fact received, or would have been received, charging the rates fixed in the Commission's order?

A. Would have been received, yes, sir.

Q. Well, in October, 1907, the Commission's order was in effect, wasn't it?

A. I beg your pardon; I had in mind the previous exhibit. Your question is correctly put as to that column. It is the amount that was in fact received.

Q. Now, why was the month of October taken?

A. That month was selected by the traffic manager and because of it being, as I understood, an average month.

Q. Then the month of October would be a fair average for

the year, would it, on merchandise of those classes?

A. That is what I understood he attempted to do.

Q. And do you consider that a fair month?

A. I really don't know.

Q. You don't know?

A. No, sir.

Q. But it was selected by the traffic manager, as you were informed, when you were asked to make up the statement, because that would be a fair month and would fairly represent the average of the year?

A. That is my recollection.

Q. Now, just how did you get at the information to make up this statement?

A. From the way-bills.

Q. Now, tell us what information you would get from the way-bills and how you would use it in making up this statement.

A. The point of origin, destination of the shipment, the class of tonnage moved, the weight, the rate, amount, and, in fact, all information we would need in order to get at the figures in this table.

Q. I find here, not a part of the table but a note at the bottom, "Average miles hauled 73.71." How did you arrive at that?

A. By taking the equivalent of one ton moving one mile of all shipments hauled during that month covered by this table, and dividing it by the number of tons hauled.

Q. I find here on this "4 X First class; 3 X First class; 3½ X First class; 1½ X First class," and so on, and "½ of Third class; ½ of Fourth class." What does that mean in this statement?

A. It means the shipments that were hauled upon which rates were assessed according to the tariff which indicates the classes.

Q. This order was made, as I understand it, to govern classes as set forth in the Western Classification. Now, are there classes in the Western Classification as "four times First class," "three times First class," "three and one-half times First class?"

A. Yes, sir.

Q. Then, these classes here, including all those that are "4 X First class" or some other class, or a fractional part of a named class, all appear as classifications in the Western Classification?

A. Yes, sir.

Q. Have you here any details or detailed summaries from which this exhibit was made which will show the mileage of the various hauls on which this schedule is made up?

A. I think so.

Q. What details have you, either here or at your office, as to this Exhibit 17?

A. We have the complete detail from which the figures were taken in order to prepare this summary.

Q. Will you produce that at a subsequent hearing?

A. Yes, sir.

Q. I call your attention to Exhibit 15. Exhibit 15 purports to be a statement showing the loss which the Minneapolis & St. Louis railroad would have suffered had the Minnesota statutory commodity rates been applied to the commodity shipments handled by that road during the month of September, 1907?

A. Yes, sir.

Q. Why was the month of September, 1907, chosen?

A. For the same reason, I presume, that the month of October was chosen in the class rate shipments, as being an average month.

Q. That would be a fair average of the year; is that the idea?

A. That is the way I understand Mr. Tittemore did in selecting that month.

Q. I call your attention to Exhibit 14. This Exhibit 14 appears to be a statement for the entire year of 1905, July 1 to June 30, 1906, made up upon the same basis or with reference to the same commodities, and for the same purpose as this statement Exhibit 15; is it not?

A. Yes, sir.

Q. Well, will you tell me how it is that the month of September, 1907, can be a fair average month to show those things when it appears, for instance, on Exhibit 14, for the year previous, that there were hauled 415 tons of hard coal, Minnesota state traffic, and there was no coal of that kind hauled in September, 1907?

A. No hard coal?

Q. Yes, according to this Exhibit 15; that is, Minnesota hard coal.

A. That is an error in copying, then; your exhibit isn't complete.

Q. Well, now, then, let us see.

A. Isn't this hard coal here (pointing)?

Q. Yes. But there was no Minnesota state traffic in that month according to this exhibit, and yet in your exhibit for the year there were 415 tons.

A. Why, in answering that question I would call your attention to the per cent of loss at the bottom of both exhibits 14 and 15, where it shows that the percentage of loss within Minnesota for the entire year would be 19.06 per cent, and for the month 19.52.

Q. Yes, but the proposition is this: This is said to be a fair average month as to these commodities, and yet in that month there was no hard coal at all hauled of the class which you show for the year previous you hauled 415 tons.

A. I would understand that in selecting an average month

he would select one that would show the results in total.

Mr. BUTLER: Mr. Tittemore explained that, if you haven't forgotten.

Mr. DURMENT: Well, I want to find what this witness knows about it.

Q. You understand, you say, that he chose them as being average months as to the totals?

A. I didn't hear him say, but my guess would be that that would be what he would aim to do.

Q. Well, there was no mistake made by you, then, in leaving out an item of the Minnesota state traffic in hard coal from Exhibit 15, was there?

A. I think not.

Q. Then there was no Minnesota state traffic in hard coal for the month of September, 1907?

A. The exhibit would indicate that.

Q. Well, you made the exhibit or had it made?

A. Had it made, yes.

Q. And from records which were in your control and possession?

A. Yes, sir.

Q. You have no question but it is right, have you?

A. No, sir, I would not.

Q. I find as to the last item, hogs, that Exhibit 14 for the year shows an earning for interstate traffic in hogs, yet there is nothing of that sort in September on Exhibit 15.

A. That is correct.

Q. That was not an error of omission, was it?

A. I presume not.

Q. As I understand this Exhibit 15, the first column of figures represents the amount actually received in September for hauling the commodities indicated in the left of the exhibit?

A. Yes, sir; that is, those that were affected by the proposed rates.

Q. And the figure in the first column of figures, plus the opposite figure under the head "Loss" would make up what would have been received by the road for those hauls if they had charged at the old rates?

A. No, sir.

Q. Under the head "Earnings" the figures that are carried on Exhibit 15 represent the amount actually received for hauls of the commodities mentioned in the left of Exhibit 15 in the month of September, at the rates which were in effect at the time the commodity-rate act was passed?

A. Yes, sir.

Q. And if you had charged for them at the rates provided in the commodity-rate act, you would have received a sum less by the amount of the opposing figure carried under the column "Loss"?

A. Yes, sir.

Q. If this were a fair average month, that means that, in the course of the year, you ought to receive for carriage of each of the commodities mentioned on Exhibit 15 approximately twelve times the amount shown as earned for those commodities in September?

A. I wouldn't say that, no.

Q. Well, then, what would it mean?

A. So far as the total is concerned, you might figure it that way and make a close guess, but not by individual commodities.

Q. Oh. You can average a total without any reference to the average of the commodities making up the total, can you?

A. Well, I didn't make this selection.

Q. No, I know that, but I want to get your understanding of this exhibit. You have put it in here as having been made up by you?

A. Yes, sir; I made it up according to the results for the

month, at the request of the traffic manager, and just his exact reasons he ought to be able to give those more clearly than I.

Q. Then you think this would not be an average on the commodities?

A. I wouldn't say that.

Q. Then you don't know whether it would or whether it would not?

A. No, I wouldn't know positively.

Q. Well, will you explain to me how it could be, if it can be, (and you seem to think it can be) that the amounts here received for the different commodities during that month might not be an average for that commodity during the year, and yet the aggregate result might be an average for the year?

A. I have never gone into that detail to know just what portion of the years the various commodities moved and in what quantities. That is a matter which I would not be interested in and have never looked into.

Q. In making up this Exhibit 15, how did you get your information to make it up and what process did you follow?

A. From the records in the office; abstracting—

Q. What information did you get from the records in the office to enable you to make this statement Exhibit 15?

A. We went to the records, which are the reports rendered by the agents, and abstracted the commodities here shown from station to station, drawing off the weight and the freight charges, and then applied the rates in the order, in order to determine the loss.

Q. I see you don't call for any averages here; you don't give any average haul. Did you get the distances?

A. We would have that from station to station, in the detail.

Q. You have a similar detail for this Exhibit 15 as you had for the others?—I mean of the same general character.

A. Yes, sir.

Q. Will you produce that also, as well as the one for Exhibit 16 we have called for?

A. Yes, sir.

Q. We asked you at a prior examination to make up some statements of moneys received by the Minneapolis & St. Louis road from bonds and stocks issued; have you a statement with you this morning showing all the bonds issued by the Minneapolis & St. Louis road since the reorganization under the last receivership?

A. Yes, sir. (Producing statement, marked "Defts' Ex. D–Scott.")

Q. As I understand it, this Exhibit D shows the various issues of bonds made by the Minneapolis & St. Louis road since the reorganization under the last receivership?

A. Yes, sir.

Q. And that it shows all the bonds which have been issued by it since that reorganization?

A. Yes, sir.

Q. And it also shows, approximately, at least, the time when those bonds were issued?

A. Yes, sir.

Q. Taking the first item, $5,300,000, I suppose that those bonds were issued to pay for the various items that appear to the left under "March, 1899"?

A. Yes, sir.

Q. From what company was the Pacific division (for which it is shown over two millions of those bonds were used) purchased?

A. Wisconsin, Minnesota and Pacific Railway Company.

Q. Had that road recently been built when the purchase was made, or was it an old road?

A. I don't know.

Q. You don't know whether it had been organized (that is,

the other company had been organized) and the road built by persons who were interested in the Minneapolis & St. Louis?

A. It was not.

Q. Were those bonds issued direct in the purchase of that road, or were they sold and the money used to buy the road with?

A. They were sold, and the money used with which to buy the road.

Q. Was this amount of $2,128,732.39 the amount of cash which was used to pay for that road?

A. No, sir.

Q. That was the amount of bonds?

A. Yes, sir.

Q. Now, what was the cash realized upon those bonds which was used with which to buy that division?

A. This item $2,128,732.39 includes, in addition to the cash price paid the W. M. & P., some equipment that was purchased, and of the entire item the cash paid was $1,846,785.33, leaving the discount $281,947.06.

Q. I find here "Cost of New Ulm Extension, $2,378,631.14." That was a road built by the Minneapolis & St. Louis Company, or a road purchased by it after it had been constructed?

A. Built by the Railroad Company.

Q. Did this amount that appears here for the cost of that New Ulm Extension represent cash paid or bonds sold from which the cash was realized to make that road?

A. Cash paid.

Q. Then that $2,378,631.14 was the amount of cash actually paid?

A. Yes, sir.

Q. And it was paid with money realized from the bonds?

A. Yes, sir.

Q. Then the bonds issued to cover that would be greater than that amount?

A. It would.

Q. I notice here "Discount on $5,000,000 bonds sold at 85, $750,000." I presume that the money shown there to have been paid for the New Ulm Extension was money realized on the sale of that $5,000,000 bonds?

A. Yes, sir.

Q. This matter of improvements, $4,888.17, what does that refer to?

A. Improvements made to the property of the Minneapolis & St. Louis Railroad Company, paid out of this issue of bonds shown for March, 1899.

Q. I notice the last item there under that head of "March, 1899" is the purchase of the "M. N. U. & S. W. R. R.," $300,000. Now, was that $300,000 in cash which was paid for the purchase of that road or $300,000 in bonds?

A. In cash.

Q. The bonds were sold and the cash used to pay for the purchase of the road?

A. Yes, sir.

Q. Were the bonds from which that $300,000 was received which was used to pay for this "M. N. U. & S. W. R. R." sold at par or less than par?

A. I would like to offer an explanation in connection with it; I think I can make myself clear in answering your question.

Q. I have no objection to the explanation, but I would like to have my question answered.

A. To answer it I think it calls for an explanation. It cost in cash to build the road the amount stated—

Q. $300,000.

A. —for which bonds were issued to cover of the first and refunding mortgage, and those bonds when issued were placed into the treasury of the Company. Now, just when they were sold and for how much I don't know unless that table that I

gave you will give that information. That table does not show just exactly when those particular bonds for $300,000 were sold.

Q. Oh, then the Company sold $5,000,000 of those bonds at 85 and received as the result of that $4,250,000 in cash?

A. Yes, sir.

Q. The M. N. U. & S. W. R. R. was then purchased by the Minneapolis & St. Louis road for $300,000 in cash, and that purchase price was paid out of the treasury from money realized upon the $5,000,000 sold, or other sources?

A. Yes, sir.

Q. And $300,000 worth of bonds issued under that mortgage and deposited in the treasury to replace the fund which had been used to buy this road with?

A. Yes, sir.

Q. And you don't know just when those $300,000 were sold, subsequently?

A. Not exactly; I have a statement here showing all bonds that were sold and the amounts realized.

Q. Nor the amount for which they were sold?

A. It can be determined exactly when they were sold and for how much.

Q. But you haven't the information right here now to do that?

A. Not for those particular $300,000 bonds, no.

Q. So at the present time you are not able to tell us just how much cash was received for the $5,300,000 of bonds?

A. For the $5,000,000 I can, but for the $300,000, not for those particular bonds; I have a statement here that shows all bonds sold and the amount realized, which would include those $300,000.

Q. Well, we will take that up later, then. Now, then, the M. N. U. & S. W. R. R.,—was that purchased from another company, or was it one built by the Minneapolis & St. Louis?

A. It was a company that was organized by the Minneapolis & St. Louis Railroad Company for the purpose of construction.

Q. And the Minneapolis & St. Louis put up the money to build the road?

A. Yes, sir.

Q. Do you know, was that road built under a contract for building, or did the Minneapolis & St. Louis itself build it?

A. I don't think there was any contract executed as between the two companies. If there was, I don't recall it now.

Q. Did the Minneapolis & St. Louis keep the itemized account of the cost of the construction of the road that was being built?

A. Yes, sir.

Q. And the amount of $300,000 was what that showed to be the actual cost of the road?

A. Yes, sir.

Q. As I understand it, this $300,000 of bonds which was turned into the treasury of the Company to replace money which had been paid out of the treasury of the Company for the purchase of this M. N. U. & S. W. R. R. went into the treasury of the Company as a general asset or part of its general funds; it was thereafter treated as an outstanding obligation under this mortgage, and as a part of $5,300,000 of bonds secured by the mortgage?

A. Yes, sir, and—

Q. In other words, when they were turned into the treasury they were turned in as having been issued and an outstanding obligation of the Company secured by that mortgage—

A. And were sold—

Q. —at the time they were turned in. They were subsequently sold?

A. Yes, sir.

Q. And subsequently, when they were sold, they were sold

as an existing security owned by the Company and without reference to being an issue under that mortgage?

A. Yes, sir.

Q. And without reference to the use to which they were first put,—that is, to cover the $300,000 cash?

A. Yes, sir.

Q. That is, they were used for the general purposes of the Company, for improvements or other purposes of the Company the same as if they had been cash?

A. When they were sold, yes, sir.

Q. The next issue of bonds was $2,500,000, approximately, in June, 1899. I suppose no cash was received for that issue?

A. No, sir.

Q. That simply replaced outstanding preferred stock which had been issued in the course of the reorganization?

A. And at this time was turned in and canceled.

Q. And were those bonds issued dollar for dollar, the par value of the stock, or was there some additional allowance made?

A. There was no additional allowance made; the two million and a half preferred stock was paid dollar for dollar, or paid in cash.

Q. Oh, it was paid in cash?

A. Yes, sir.

Q. Then this $2,500,000 of bonds was actually sold and the money used to retire the first preferred stock?

A. Yes, sir.

Q. And for the first preferred stock was paid how much,—just the par value of the stock?

A. The par value.

Q. No premiums?

A. No premiums.

Q. Were the $2,500,000 of bonds which were used to retire the first preferred stock sold at par?

A. No, sir.

Q. How much money was realized on those?

A. Sold at 7 per cent discount, amounting to $175,000.

Q. Then you received in cash for those $2,325,000?

A. Yes, sir.

Q. Going back to the $300,000 which were paid into the treasury out of the $5,300,000 issue, was interest paid upon those into the general treasury while they were held by the Company in the treasury?

A. Yes, sir. But it would be, of course, eventually a payment and a receipt; but interest was figured and credited to income account on all bonds that are held in the treasury; but there would be a corresponding charge to income account, so that the amount would net nothing so far as income account is concerned.

Mr. BUTLER: The Company was, in effect, paying itself?

WITNESS: Yes, sir.

Q. That is what I want to get at. The Company would, of course, place into its treasury, to become a part of its general funds, the interest on those bonds, the same as if it had paid it to somebody else?

A. Yes, sir.

Q. And the income of the Company upon its books was increased by that much, by the amount of the interest?

A. No. The income means both payments and receipts, so that the income would not be affected at all.

Q. But your books would show your general assets or your general fund increased by the amount of the interest, wouldn't they?

A. No, sir; would have to take it out.

Q. Your next item is $351,000 June, 1901; for what were they issued?

A. To reimburse the Company for cash expended in purchase of real estate, to the extent of $58,000, and for new equip-

ment $98,094.70, and in improving, additions or improvements to the property of $195,622.25.

Q. As I understand that transaction, the Company, from funds in the treasury, had expended $58,000 in the purchase of real estate and $98,094.70 for equipment and $195,622.25 for improvements and betterments, and the $351,000 bonds were issued and turned into the treasury to replace that amount which had been paid out for those purposes?

A. To replace the amount that had been paid out in cash for those purposes, yes, sir.

Q. And thereafter they stood in the treasury in the place of that cash for the general purposes of the business of the Company?

A. Yes, sir.

Q. The same as the $300,000 we have referred to in the issue of $5,300,000?

A. Exactly.

Q. Were those amounts which had been paid out by the Company making up the $351,716.95 paid in actual cash to that extent?

A. Yes, sir.

Q. The bonds were not issued to the Company, then, at a discount?

A. No, sir, they were not.

Q. They were issued at face value?

A. The exact amount of cash expended.

Q. Was covered by the par value of the bonds?

A. For the same amount, with the exception of the small difference that you notice there. The expenditures were for $351,716.95, and under the mortgage they issued bonds for $351,000 only, dropping the $716.95. You see a $1,000 bond is the unit; that is, the bonds are of a $1,000 issue, each bond.

Q. I suppose that these expenditures here which were replaced by these bonds for $351,000 had been made, the money

paid out, before the bonds were issued?

A. Oh, yes.

Q. And can you tell us when they had been made, in what period?

A. I can by reference to the certified copy of the statement which we have on file in the office. I can bring copies of each statement that was rendered to the Trust Company, upon which basis the bonds were issued; can give you the complete details on that.

Q. You haven't it here?

A. Not here.

Q. I wish you would.

A. There are several items of the same nature and I can give a copy of the certified statement for all of them. I might also add that that statement will show the dates during which the expenditures were made.

Q. I suppose you cannot tell us, at this time, how much money was received of that $351,000 of bonds when they were sold, can you?

A. There were none sold for that particular amount. They were sold in various lots, but none for that particular amount.

Q. Now, we have the next item, $609,142.12 in June, 1903. I suppose that transaction is identical, as to process and results and purposes, with the transaction of the $351,000?

A. Yes, sir.

Q. And I suppose you cannot tell us, at this time, how much money was realized for those bonds when they were subsequently sold after they had been placed in the treasury?

A. Not for those particular bonds.

Q. The next item we have is $257,000 in March, 1904. What was that "Cost of Albert Lea property" included there? I mean what was the property.

A. It was the terminal property at Albert Lea, which, prior to that date, was owned jointly (half-and-half interest each)

with the Rock Island Company, and we purchased their one-half interest for the sum of $30,000.

Q. You paid $30,000 in cash to that company for their interest?

A. Yes, sir.

Q. Now, then, the "Improvements"—I suppose the detail which you furnished the Trust Company when that $257,000 of bonds was issued, will show what those improvements were?

A. Exactly.

Q. They had been paid for by the Railroad Company in cash?

A. Yes, sir.

Q. Dollar for dollar?

A. Dollar for dollar.

Q. The "Reconstruction of line Hopkins to Chaska,"—what was that item?

A. Improving the line in all respects between those two points.

Q. As I understand it, in this case as in the others we have spoken of, these moneys shown here, the items aggregating $256,739.23, had been actually paid by the Company out of its treasury and then $257,000 in bonds were issued and delivered to the Company to replace that amount in its treasury?

A. Yes, sir.

Q. And the $257,000 was thereafter held as a part of its general fund in lieu of the cash?

A. Yes, sir.

Q. They were subsequently sold; can you tell us how much was realized?

A. Not on those particular bonds. This statement does not show that.

Q. The next item is $641,678.26 in March, 1904, for the purchase of Des Moines & Fort Dodge Railroad stock. Was that stock issued direct in the purchase of the Des Moines &

Fort Dodge Railroad stock, or was the stock purchased with cash and bonds issued and put in the general treasury, as in the other cases?

A. It was purchased in cash.

Q. What was the par value of the capital stock so purchased?

A. 25,300 shares of common stock, par value $100 per share, or, in money, a total of $2,530,000, par value.

Q. And the Company paid in cash for that stock $641,678.25?

A. Yes, sir.

Q. That was paid out of the general treasury?

A. Yes, sir.

Q. And the $642,000 were subsequently issued and put into the general treasury in lieu of the cash so paid?

A. Yes, sir.

Q. And were disposed of later and used for the general purposes of the Company?

A. Yes, sir.

Q. I suppose you cannot tell how much in cash was received for these particular $642,000 in bonds at this time?

A. No, sir.

Q. The next item is $186,000 March, 1905. I suppose that with these bonds, as in case of others, they were issued and put into the general treasury of the Company to replace money which had been paid out by the Company for the items specified under head of "March, 1905"?

A. Yes, sir.

Q. And you cannot tell at this time what those particular bonds were sold for in cash later?

A. No, sir.

Q. I notice under this head here "Discount on $500,000, bonds sold at 95, $2500; less penalty on 50 shares stock $2500." Explain those, will you?

A. I think those items should have been left off the statement; they do not affect it one way or the other.

Mr. DURMENT: It is agreed that the items "Discount on $500,000, bonds sold at 95, $2500; less penalty on 50 shares stock, $2500" shall be stricken from Ex. D–Scott, as they do not affect the statement and have no place in it.

Q. The next list here is $146,000, under head of August, 1906. I presume that that was an issue of $146,000 par value of bonds placed in the general treasury of the Company to reimburse the general treasury for the sum of $145,624.57 theretofore paid out by it for the items shown under "August, 1906" on the exhibit?

A. Yes, sir.

Q. And it is an identical transaction with the former instances where bonds had been issued to the general treasury to reimburse it for money paid out?

A. It is.

Q. And in that case you cannot tell us, any more than in the others, the particular amount of cash received for those bonds?

A. No, sir.

Q. The next item is $92,000 under head of "January, 1907." That, I suppose, is a transaction similar in every respect to the last one mentioned?

A. It is.

Q. I notice under the details that there seems to be a credit item $660.65. Explain that.

A. Real estate that was sold that had been previously covered by a bond-issue in some one of these items we have passed over.

Q. That is, real estate had been sold for which $660.65 was realized and the Company had received the money and used it?

A. Yes, sir.

Q. And that was money received for property, or which had been, theretofore, which was covered by the mortgage which secured these bonds?

A. Yes, sir.

Q. The next item is an item of $315,000 under head of "January, 1907." It appears to have been issued for retirement of Minneapolis & Merriam Junction bonds. Was that an exchange of bonds, or did you pay off the Minneapolis & Merriam Junction bonds in money?

A. Paid them off in cash.

Q. Out of the general treasury?

A. Yes, sir.

Q. Paid them their full par value, or did you pay a premium on them?

A. Par value.

Q. Was the particular money which was used to pay these realized from the sale of the $315,000 of bonds, or was that advanced out of the general treasury?

A. Advanced out of the general treasury.

Q. And then the $315,000 issued to reimburse the general treasury?

A. Yes, sir.

Q. And you cannot, at this time, tell how much cash was realized for the $315,000 when sold?

A. No, sir. They may not be sold.

Q. Now, I notice here in May, 1907, $15,000 for Minneapolis & Merriam Junction bonds retired and $117,000 September, 1907, for Minneapolis & Merriam Junction bonds retired. I presume the transaction in each of those cases was identical with the transaction as to the $315,000?

A. Yes, sir.

Q. I find here an item of $82,000 under August, 1907. I suppose that is another case where the Company out of the general treasury paid the money, dollar for dollar, to the

amounts specified in the items under August, 1907?

A. Yes, sir.

Q. And then $82,000 par value of bonds were issued and delivered to the Company and placed in its general treasury in lieu of the cash?

A. Yes, sir.

Q. And thereafter used for the general purposes of the Company as cash?

A. Yes, sir.

Q. Now, the last item on this exhibit is $133,000, March, 1908. That transaction was identical in its manner and purposes with the last one referred to and former ones of that kind?

A. Yes, sir.

Q. I understand that in case of each issue of bonds specified here, beginning with the $351,000 in June, 1901, a statement was furnished the Trust company of the details of these payments, and the dates when made, and upon the basis of that statement the Trust company issued and delivered the bonds to the Company?

A. Yes, sir; except the issues to cover the Minneapolis and Merriam Junction bonds retired. In those cases the bonds themselves, of the old issue that was retired, were deposited with the Trust company, and they then issued a corresponding amount of the first and refunding issue.

Q. Will you produce the statement, or your copies of statement, furnished the Trust company for the issue of each lot of these bonds we have referred to?

A. Yes, sir.

Q. Of these bonds which appear to have been issued as shown on Exhibit D–Scott, it appears a large number of them were issued and placed in the general treasury of the Minneapolis & St. Louis Company; it appears inferentially that some of them, at least, have been sold since they were issued

and placed there; will you tell us how many of the bonds which had been so issued and delivered into the general treasury were in the general treasury undisposed of on April 30, 1908?

A. $1,240,000 par value.

Q. It appears also here that of the bonds shown on Exhibit D–Scott $5,000,000 of them were sold for $4,250,000, and $2,500,000 of them sold for $2,325,000; it appears that the remainder of the bonds shown on that exhibit which were sold (that is such of these as were sold) were sold without reference to the particular issue or time of issue, but from time to time, and without reference to the particular disbursements. Now, can you tell us, or give us a statement showing when these bonds were sold and the amount of cash realized from them?

A. Yes, sir.

Q. That is, without reference to the particular disbursements. Will you produce it?

Witness produces statement of dates and amount of bonds sold, amount realized and discount, and same was marked "Defts' Ex E–Scott."

Q. Ex. E is that statement, is it?

A. Yes, sir.

Q. Looking at Ex. E, it appears to me that it shows how many of the entire number of bonds shown on Ex. D have been sold and how many remained in the treasury, and also the various dates when they were sold and the amounts realized in cash and the discount in each case?

A. Yes, sir.

Q. So then, Exhibit E–Scott is a complete statement as to the sales and receipts of cash from sales of the bonds shown in Ex. D?

A. Yes, sir.

Recess until 2 P. M.

AFTERNOON SESSION.

Q. Referring again to Ex. D-Scott,— as I remember your testimony, under the details of that first lot of bonds, you said the cost of the New Ulm Extension ($2,378,631.14) was cash. Now, as to the preceding item, you said that was bonds; that in the amount stated there for the purchase of the Pacific division you had stated it in bonds which included the discount. I understood you to say, as to the cost of the New Ulm branch, the amount stated there was actual cash and didn't include the discount; am I right in that?

A. I don't think that I stated that. My statement was that it cost in cash, and I quoted the figures of $1,846,785.33.

Q. That is, the purchase of the Pacific division?

A. Yes, sir.

Q. Now, as to the cash cost of the New Ulm Extension?

A. That is $2,378,631.14.

Q. In cash?

A. Yes, sir.

Q. That was not the amount of bonds taken to realize the cash paid for it, then?

A. No, sir.

Q. Why would you show in this detail, then, the cost of the Pacific division in bonds and not actual cash and the cost of the New Ulm Extension in actual cash and not in bonds?

A. It could be shown separately, perhaps it would be more clear; but by referring to Exhibit 7 the detail of the $2,128,732.39 will show clearly what is cash and what is discount; but it could have been shown on the same basis, which would perhaps have been a little more clear.

Q. Then this $281,947.06 discount here, which you have deducted from the $750,000 discount, was that portion of the $750,000 which applied to $2,128,732.39 for the Pacific division?

A. It is a part of it.

Q. So then, the discount on the bonds which were used to get the money to pay for the Pacific division is included in this detail item here of $2,128,732.39?

A. Yes, sir; and amounts to $281,947.06.

Q. And the cost of the New Ulm Extension of $2,378,631.14 is the actual cash cost, and the discount on the bonds which were sold to produce that is included in the item $468,052.94?

A. Yes, sir.

By Mr. BUTLER:

Q. Mr. Scott, I call your attention to the paper which has just been marked "Complainant's Ex. 7-A-Scott," and which is now offered in evidence, and ask you to explain to the Master the difference between that Exhibit 7-A and Exhibit 7, having reference to the matter referred to in your cross-examination by Mr. O'Brien, week before last, I think it was, when you were first upon the stand.

A. Well, on Exhibit 7-Scott, there appears an item of discount of $500,000 on first consolidated mortgage bonds, from which a deduction was made of $281,947.06, representing discount on bonds issued in connection with the purchase of the Pacific division, leaving a net discount of $218,052.94; whereas, the discount should have read the full $500,000, because the $281,947.06 is a proper deduction from the discount of $750,000 shown on page 3 of Exhibit 7-Scott, representing discount on five million first and refunding bonds sold in March, 1899.

Q. That is, the seven hundred and fifty included the item that you speak of twice?

A. No; the purchase, or rather the Pacific division was taken care of in this five million issue here, rather than the five million of the consolidated bond issue.

Q. Which was first mentioned?

A. Yes, sir; so that the item on page 3 for the corrected Exhibit 7-A-Scott now appears $470,552.94, instead of $752,500, as it was formerly, in Exhibit 7-Scott.

Mr. BUTLER: Complainants offer Complainant's Exhibit 7-A-Scott.

By Mr. DURMENT:

Q. Now, as I understand it, on your Exhibit 7-Scott, on the first page, you proceeded upon the theory that the Pacific division had been purchased out of the proceeds of the five million consolidated mortgage bonds mentioned there?

A. Yes, sir.

Q. And out of the proceeds of the first consolidated mortgage bonds?

A. Yes, sir.

Q. And that, for that reason, when you showed the discount of $500,000 on the first consolidated mortgage bonds, you should reduce it by $281,947.06, because on the succeeding page of the exhibit you have taken into account that same discount, $281,947.06?

A. Yes, sir.

Q. As a matter of fact, you discovered that the Pacific division was not bought with the proceeds of the consolidated first mortgage bonds?

A. Yes, sir.

Q. And for that reason that deduction was improperly made?

A. Yes, sir.

Mr. BUTLER: But the restatement of the matter by Complainant's Exhibit 7-A-Scott, does not in any manner affect the totals; so the figures come out with respect to the totals, as before, do they not, Mr. Scott?

WITNESS: Yes, sir.

Q. In making up your Exhibit 7-Scott, you proceeded upon the theory that the Pacific division was purchased with money derived from the sale of first consolidated mortgage bonds and not from the first and refunding bonds, and for that reason on page 3 of the Exhibit 7 you included in your statement the full

$750,000 discount which was allowed on the sale of the $5,000,000 first and refunding bonds mentioned in Ex. D?

A. The two issues were exactly similar, five million each, and it was a clear error in the clerk in applying the discount against the first consolidated issue instead of the first and refunding; he got the two mixed.

Q. But your statement, Exhibit 7, upon the face of it, was made up upon the theory—

A. Yes.

Q. —that the Pacific division was bought out of the proceeds of the first consolidated and not out of the proceeds of the first and refunding bonds?

A. Yes, sir.

Q. And for that reason, on page 3 you carried the full $750,000 discount which had been allowed on the $5,000,000 first and refunding?

A. Yes, sir.

Q. Then, because it now appears that the Pacific division was in fact purchased with money procured from the sale of the $5,000,000 first and refunding bonds and that you have taken account of $281,947.06 of the discount on the first and refunding bonds under the head of "Cost of Pacific Division" on page 2 of your Exhibit 7, it became necessary to deduct that amount from the $750,000 discount as shown on page 3?

A. Yes, sir.

Q. And deducting that would give you the total of $470,552.94 for that item, as shown in your Exhibit 7-A?

A. Yes, sir.

Q. And the only change made in Exhibit 7 by Exhibit 7-A-Scott is in rectifying that one matter of discount, is it?

A. Yes, sir; it didn't affect the total cost at all.

Q. Referring to Exhibit 7-A in connection with Exhibit D-Scott, I understand that on page 2 of Exhibit 7-A, under the head of "Cost of Pacific Division" we find the details of the

item in Exhibit D–Scott under head of "March, 1899, Purchase of Pacific Division $2,128,732.39"?

A. Yes, sir.

Q. That detail shows, as I understand it, that in the $2,128,732.39 is included for discount $281,947.06, and consequently that the cash paid on that transaction was $1,846,785.33?

A. Yes, sir.

Q. Now, on page 2 of Exhibit 7–A, under the head of "Cost of New Ulm Extension," I understand is given the details of the item in Exhibit D–Scott, "Cost of New Ulm Extension $2,378,631.14"?

A. Yes, sir.

Q. And that detail shows that the total amount of $2,378,631.14 was cash actually paid in the construction of that extension?

A. Yes, sir.

Q. As I understand it, the items on pages 2 and 3 of Exhibit 7–A, under the head of "Cost of Minnesota, New Ulm & Southwestern R. R." are the details of the item in Exhibit D–Scott "Purchase of M. N. U. & S. W. R. R., $300,000"?

A. Yes, sir.

Q. I notice in Exhibit 7–A in these details an item of "Expense of Organization, $1,307.65." What is that?

A. Expenses of organizing the company, the Minnesota, New Ulm & Southwestern Railroad.

Q. Oh. this was a corporation that was organized by the Minneapolis & St. Louis road, then, was it?

A. I think so. It was prior to my time, but I am quite sure that it was an organization by—

Q. It was done at the suggestion of the managing officers of the corporation, the Minneapolis & St. Louis road, and for its benefit, I suppose?

A. I suppose so; I have never had occasion to look into the

organization of that company, but we have all the records there in the office.

Q. Did the Minneapolis & St. Louis Railroad Company buy the right-of-way and property of that company, or simply its capital stock?

A. It advanced the money, evidently, with which to buy that right-of-way and to construct the road. It financed it.

Q. Well, do you know whether the Minneapolis & St. Louis Company has acquired the title to the right-of-way and property of that road?

A. Oh, they have now.

Q. They have the legal title to it, have they?

A. Yes, sir.

Q. And do you know what became of the stock of the company?

A. I don't think there was any issued. Construction company, perhaps.

Q. This was a construction company?

A. I wouldn't say that, either.

Q. So you don't know, then, whether there was any stock issued or not?

A. No, sir.

Q. Nor whether there was ever any transfer of the title of the property to the road or not?

A. I could find out from the records that I have there.

Q. Well, I think you had better make a note of that and find out for us, if you will.

A. Certainly.

Mr. BUTLER: That is, whether the property of that company was conveyed by deed or whether they held the stock of that company?

Mr. DURMENT: Yes, and if not, who does hold the stock.

Q. I notice, also, on page 3 of Exhibit 7, included in that $300,000 total, an item of "Net Deficit from Operation July 1,

1896, to February 28, 1899, $6,330.23."

A. Yes, sir, that is correct.

Q. I think you explained that before, but I wish you would tell us again what it is.

A. The entry was made prior to my time, but it was the net loss in the operation of the property between those dates.

Q. That is to say, the Minneapolis & St. Louis Company advanced the money to build this line, and in some way, either as owners in fee of the property or as owners of the stock, operated the line in connection with the rest of their line from July 1, 1896, to February 28, 1899, and in that period there was a net loss, as the books were kept, of this amount?

A. Yes, sir.

Q. And therefore the Minneapolis & St. Louis charged that to the construction or cost of the road?

A. Yes, sir.

Q. Is that the only one of their branches or subsidiary companies occupying a similar relation to it where they operated the roads and kept account of their receipts in the same way?

A. The only one I know of.

Q. And in the others, if there was any profit made in the operation during that time, it was not deducted from the cost of the road to the Company, was it?

A. Yes, sir.

Q. Well, now, then, what companies? Will you just show us which of your subsidiary companies mentioned here, where they built them and operated them in that way and made a profit from them, that they deduct the profit from the cost of the road to them?.

A. Not in these exhibits, but the line that is being constructed now, or has just been finished, west of Watertown, there was a surplus from the operation of trains, and that amount was credited to the cost of construction. Now, in this case, it happened to be the other way, apparently, and they

charged cost of construction.

Q. But in any of these you have included in your exhibits here, was there any account taken of profits or loss except this one?

A. I think not. I don't see any. Here is the point: They operated trains—they have to, over every line that is under course of construction—and if there is a loss, it would be included in your items of expense; if it is hauling bridge material, or if it is grading, or if it is in any special construction work, the cost of that service would be in your item of expense; but here is a case where evidently there were some revenues and they kept the cost of earning those revenues separate from the construction expense and made a division of it and they charged the net loss of the operation to construction.

Q. But here was a period of nearly three years in which they operated the road; it could not have been under course of construction during that time, could it?

A. Apparently it was.

Q. Well, do you know except what appears upon that exhibit?

A. No, sir. Here are items that have been expended by the M. & St. L. up to March 1, 1899, in connection with the construction of that property.

Q. It appears here on this Exhibit 7–A that you purchased 20.22 miles of this road on March 1, 1899, which seems to be the entire road; you purchased it at that time, and in that cost of purchase you have included a deficit for the operation of that road before your Company ever acquired it?

A. Yes, sir.

Q. As a part of the cost of the road?

A. Yes, sir.

Q. I understand that this total of $300,000, made up in this way, was actual cash paid?

A. Yes, sir.

Q. And there was no discount for bonds included in the $300,000?

A. No, sir, nor any item of cost equipping it.

Q. There is no item of cost of equipping included in that $300,000 shown on Exhibit D for the purchase of that road, either, is there?

A. No, sir.

Q. I understand that the item on page 3 of Exhibit 7–A, "Des Moines & Fort Dodge R. R. stock (25,300 shares common) $641,678.26" is the same as the item in Exhibit D "Purchase of Des Moines & Fort Dodge R. R. Stock, $641,678.26"?

A. Yes, sir.

Q. On Exhibit 7–A, page 3, under head "Reconstruction of line Hopkins to Chaska during 1902 and 1903," I find the items in the cost of the reconstruction of that line amount to $540,490.22.

A. Yes, sir.

Q. Will you indicate what items on Exhibit D represent the items which appear on page 3 of Exhibit 7–A under the head of "Reconstruction line Hopkins to Chaska"?

A. In June, 1903, $389,499.85; March, 1904, $147,224.03; March, 1905, $2,264.77; and there is still a balance of $1,501.57 that is evidently included as a part of an improvement item in one of the months following, namely August, 1906, January, 1907, etc. The amount is very small and it was not shown as a separate item.

Q. I notice in Exhibit 7–A, in this total for the reconstruction of the line Hopkins to Chaska, an item of interest and exchange, $15,189.91; what does that mean?

A. Interest upon the amount advanced by the Minneapolis & St. Louis Railroad Company during the course of construction and before their treasury was reimbursed by bond issue. That is to recover interest that had been paid out on money borrowed with which to do this work.

Q. But it appears, I should say, from your exhibits here, that your Company then had money in its treasury from the sale of bonds with which to make these payments?

A. They had bonds in the treasury but you can't always sell them. They have bonds now—$1,240,000—that they would be tickled to death to get a fair price for.

Q. You mean to say that you had bonds available for the purpose of raising money to construct these roads with or to make these improvements with and yet they borrowed money outside to pay these expenses?

A. That condition exists today with this $1,240,000 worth of bonds in the treasury. We have bills-payable account of very nearly $1,000,000.

Q. How was this money borrowed?

A. On notes, short-time notes.

Q. Will your books show what particular moneys were borrowed and when they were borrowed and when paid, with which to reconstruct this Hopkins line to Chaska?

A. Why, I don't know that you could pick out the particular loan; I can show what money was borrowed prior to the time of construction, what their bills-payable account was at the close of each month during the entire time of construction, but—

Q. And what the money was on hand—

A. Yes.

Q. —during the entire time?

A. Oh, yes.

Q. Well, why should the interest, then, be charged to this item rather than to operating expenses or other expenses?

A. Because it is an improvement to the property which, under the Interstate Commerce Commission classification is classified the same as entire new construction.

Q. But you don't know whether the money you borrowed was used for one purpose or another, it all went into the treasury, didn't it?

A. We know that we had to pay out this money through vouchers daily, etc.

Q. But when you borrowed the money it went into your general fund, didn't it?

A. Certainly.

Q. And was used for all purposes?

A. Yes, sir.

Q. It was not borrowed specifically for this road?

A. It was borrowed because of this indebtedness.

Q. Well, this and other indebtedness, I suppose?

A. This and other, perhaps.

Q. But it was not set aside for this particular work?

A. Oh, no.

Q. It was simply borrowed and put into your general fund and used for all purposes?

A. Yes; it would not be practical, you know, to borrow a sum with which to just finance any one particular piece of work.

Q. Do you know how much interest you paid for money that was borrowed and put into your general treasury during the period covering the reconstruction of this line?

A. Yes, sir, our reports to the Warehouse Commission would show that.

Q. How did you apportion the interest which was paid during that period to this road and as between the other funds or other—

A. Upon the amount advanced in the interests of the improvement.

Q. Well, how would you apportion it upon that advance?

A. Charge a fixed per cent upon the amount advanced in connection with the construction or improvement of the property.

Q. But then that was not at all with reference to the amount that you paid as a whole for all money borrowed and

in your general treasury?

A. Oh, no.

Q. You simply treated it as a loan to yourself for the purpose of making construction of that road on your books?

A. Improving. A big improvement of this kind, or constructing an entirely new line, is a different proposition from an operating proposition. When you enter into an item where it is going to cost half a million dollars you have got to finance it, and in this particular instance, as the money was advanced, according to the books, at the close of each month they would figure the interest for the succeeding month.

Q. That is to say, that your Company in making these improvements would advance the money out of the general treasury to pay for them and charge it up against the improvements as so much advanced for the improvements?

A. Yes, sir.

Q. And then you would charge interest on it at a fixed rate, just as if you had loaned the money to another company to make the improvement with?

A. Exactly.

Q. And you did that without reference to any interest you had to pay upon money that was in your general treasury?

A. Yes, sir.

Q. Now, in this item, the details of the reconstruction of line Hopkins to Chaska, on page 3, Exhibit 7-A, I find an item "General Expenses, $5,289.12." What is that?

A. That is a charge made under the classification of expenditures for road and equipment as prescribed by the Interstate Commerce Commission to cover stationery and printing, insurance, and expenses of a miscellaneous nature, such as organization expenses. Cost of printing certificates of stocks and bonds would not apply in this case; but the classification provides "Salaries and expenses of executive and general officers of a road under construction; clerks in general offices engaged

on construction accounts or work; rent and repair of general offices when rented, with the furniture and office expenses; also all items of a special and incidental nature which cannot be properly charged to any other account in this classification."

Q. I supposed you had a separate account of this improvement on your books, inasmuch as you charged to it moneys as you advanced them?

A. We have.

Q. Now, what was included, if anything, in that item for $5,289.12 for the expenses of general officers?

A. There would be expenses that were made entirely in the interests of this piece of work, but I don't believe there was anything of that kind in this piece of work.

Q. Would there be any stationery and printing for this particular piece of work?

A. Yes, I should think so.

Q. Well, what kind?

A. Well, blanks and papers, etc., that would be used in connection with it; but that item would be small.

Q. There was no charge for organization work either, in that, was there?

A. No.

Q. I will ask you to let us have a statement of what makes up that item $5,289.12.

A. All right.

Q. There is a similar charge of $13,434.32, under the head "Cost of New Ulm Extension" on page 2 of Exhibit 7-A. Let us have the items that make up that total, please.

A. Yes, sir.

Q. Now, on page 3, Exhibit 7-A, I find "Purchase of C. R. I. & P. Railway's one-half interest in Albert Lea property, $30,000." Is that the same $30,000 which appears on page 1, Exhibit D-Scott under March, 1904?

A. Yes, sir.

Q. On page 4, Exhibit 7–A, under the head of "Additions and Betterments" is there included in that any of the items on Exhibit D–Scott, and if so can you point them out?

A. Yes, sir. The items shown as "improvements, betterments," and "additional property," and "right-of-way and station grounds," and "real estate," made in March, 1899, in June, 1901, June, 1903, March, 1904, March, 1905, August, 1906, January 1907, August, 1907, and March, 1908.

Q. Where on Exhibit 7–A, if at all, does the item which appears upon Exhibit D–Scott under head "March, 1899, improvements, $4,888.17" appear?

A. Under "Additions and Betterments" page 3, Exhibit 7–A–Scott.

Q. Then, as I understand it, all items on Exhibit D–Scott which appear as "Improvements," "Real Estate," "Improvements and Betterments," "Additional Property," "Right-of-way" and "Station Grounds," are included in Exhibit 7–A on page 4 under the head "Additions and Betterments"?

A. Yes, sir.

Q. Now, does Exhibit 7–A include under the head of "Additions and Betterments" anything else than that which is shown on Exhibit D–Scott under these items you have mentioned?

A. Yes, sir.

Q. What?

A. Expenditures in improving the property during the months of January to April, 1908, inclusive.

Q. That is all, is it?

A. That is all.

Q. Are those items separated there so you can point them out on Exhibit 7–A under the head of "Additions and Betterments"?

A. No, sir; they are all in there according to the various items, only; on April 30, 1908, bonds had not been issued, or

rather, certified to, by the Trust Company for the expenditures from January to April.

Q. And this total under the head of "Additions and Betterments" on Exhibit 7–A, then, is larger than the total of the items that you have mentioned on Exhibit D–Scott (as included in it) by the expense incurred for improvements and the like in the months of January to April, 1908?

A. Yes, sir.

Q. And that is all?

A. Yes, sir.

Q. What is the excess for that period of January to April, 1908? Give the aggregate amount included under "Additions & Betterments" in Exhibit 7–A which does not appear in Exhibit D—Scott.

A. $77,781.18.

Q. Will you state generally the nature or character of the items making up this $77,781.18 you have just spoken of?

A. Items of the same nature as those listed under "Additions and Betterments" on page 4 of Ex. 7–A–Scott.

Mr. BUTLER: It does not appear on Ex. D because—

WITNESS: Because application had not been made on April 30, 1898, to the trustee, the Central Trust Company of New York, for bonds to cover the expenditures.

Q. Will you indicate what items on Ex. D are included in Ex. 7–A, page 4, under the head Equipment?

A. All items listed on Ex. D, both pages 1 and 2, shown as Equipment.

Q. Does Ex. 7–A, under the head Equipment, include any items other than those shown on Ex. D as Equipment?

A. Yes, sir.

Q. If so, you may state what items and the aggregate of such items.

A. The aggregate of the item or items is $616.10, but I am unable to say just where that amount would appear under the

heading Equipment, on the fourth page of Ex. 7-A.

Q. But it would be properly classed under that head?

A. Yes, sir.

Q. Why was that not shown on Ex. D?

A. Because application had not been made by the trustee, the Central Trust Company of New York, for bonds to cover the expenditure.

Q. Do the amounts stated under Additions and Betterments and Equipment, in Ex. 7-A, represent the amount in actual cash expended by the road?

A. Yes, sir.

Q. Have bonds been issued since April 30, 1908, to the Minneapolis & St. Louis road for these additional amounts of $77,781.18 under the head of Additions and Betterments and the $616.10 under the head of Equipment?

A. Yes, sir.

Q. And they are now in the treasury?

A. Yes, sir.

Q. Have there been any bonds issued other than those since then to your Company?

A. No, sir.

Q. Then the total first and refunding bonds issued up to this time would be what?

A. Bonds have been issued and recovered from the trustee for the amount shown on page 4 of Ex. 7-A-Scott under Additions and Betterments and Equipment for the $78,397.28 and they are now in the possession of the Company in its treasury.

Mr. BUTLER: That makes the total amount how much?

Q. That would be $78,000, wouldn't it?

A. The bonds were issued to recover expenditures made to June 30, 1908, which, of course, included these items.

Q. And other items?

A. And other items, expenditures during May and June, 1908.

Q. But for this period that we have referred to, of Ex. 7-A, the total of $10,745,000 would be increased by $78,000?

A. Yes, sir.

Mr. BUTLER: Down to April 30, 1908, what would the total figure be?

Mr. DURMENT: $10,823,000, as I figure it; $745,000 plus $78,000.

WITNESS: A total of $10,823,000.

Mr. BUTLER: That is down to April 30, 1908, chargeable to that period?

WITNESS: Yes, sir.

Q. I notice in this Ex. 7-A on page 3 an item "Discount on $500,000 first and refunding bonds sold in April, 1904, $2500." That enters into the total discount carried on that page of $470,552.94?

A. Yes, sir.

Q. Then why do you include in this statement Ex. 7-A that item of discount?

A. Because of the sale of fifty bonds in April, 1904, to Redmond Kerr & Co., on which was realized $47,500 making the discount of $2,500.

Q. Well, on Ex. 7-A it says discount on $500,000.

A. Yes, sir.

Q. It is really a discount on $50,000 worth of bonds, isn't it?

A. Yes, sir, it is.

Mr. BUTLER: We will correct that exhibit throughout by cutting off a cipher.

(The Reporter was directed to change Complainant's Ex. 7-A-Scott as indicated above.)

Q. It appears from your Ex. E-Scott that there were a lot of bonds sold subsequently and prior to April 30, 1908, on which there were discounts, and yet none of those discounts are carried into Ex. 7-A; why is that?

A. Because those bonds are still in the treasury—$1,240,000.

Q. Then up to April 30, 1908, your Company had issued of first and refunding mortgage bonds—that is, had issued and sold and received the cash for—only $5,300,000 of such bonds; is that right?

A. No sir; $9,505,000, as per Ex. E.

Q. Evidently you misunderstood what I had in mind by the question. It appears from Ex. E that prior to April 30, 1908, and subsequent to the reorganization after the last receivership, your Company had sold, on which it received the cash, $9,505,000 par value of first and refunding mortgage bonds?

A. Yes, sir.

Q. And that you had received for those bonds in cash $8,438,150, and allowed a discount upon the par value of $1,065,850?

A. $1,066,850.

Q. Will you point out on Ex. 7-A which of the discounts on those bonds are entered in Ex. 7-A?

A. Some of the discount has been charged to profit and loss.

Q. How much of it?

A. $132,350, according to the figures that I refer to here, which amount I can verify if you wish.

Q. Do you know when that was charged to profit and loss and why?

A. At various times—and against my judgment—upon the instructions of the executive officers. I asked for the privilege of charging that to cost of road and the New York people said, "No,—profit and loss."

Q. Do you know on which bonds that discount was charged off?

A. I can indicate it on Ex. E by referring to the records.

Q. That is sufficient. By referring to the records you can indicate it on Ex. E?

A. Yes, sir.

Q. Will you do so?

A. Yes, sir.

Q. Then as I understand your testimony, there is in the hands of the Minneapolis & St. Louis Company at this time, of the bonds issued to its treasury on account of these various matters shown on Ex. 7–A and Ex. D, $1,240,000 which was on hand April 30, 1908, and an additional $78,000 which was issued subsequently for improvements, moneys paid out prior to that time?

A. Prior to April 30, 1908, yes, sir.

Q. Making a total of $1,318,000 as of that date?

A. Yes, sir.

Q. I understand they are not disposed of yet.

A. No, they are not.

Mr. BUTLER: I understand that since that date other bonds for like purposes have come in and are actually now in the treasury.

Q. Yes, but there is in the treasury $1,318,000 of bonds issued to them to reimburse them for moneys paid out and shown upon Ex. 7–A?

A. Yes, sir.

Adjourned until Thursday morning, August 27th.

FEDERAL BUILDING, St. Paul, Minn., Thursday, August 27, 1908, the hearing was resumed at 10 o'clock A. M.

LEMUEL G. SCOTT,
recalled for further cross-examination, testified.

By Mr. DURMENT:

Q. Have you here this morning the details of the item general expense $13,434.32, which is shown under cost of New Ulm Extension, Exhibit 7–A?

A. I didn't get that completed; it necessitates going through the records, you know, for quite a period of time.

Q. And have you here the details of the other item, general expense, under the head of reconstruction of line Hopkins to Chaska, $5,289.12?

A. No, sir.

Q. Beginning on page 2 of Exhibit 7–A cost of Pacific division, all items thereafter shown in Exhibit 7–A were for cost of road or expenditures made by the road after the last reorganization, as I understand?

A. Yes, sir.

Q. The last three items on Exhibit 7–A "par value of Minnesota Transfer Railway Company's stock owned, $7000; bonds of the same company owned $144,000; par value of St. Paul Union Depot Company's stock owned, $103,600"—were they paid for out of the proceeds of bond sales, or how were they paid for?

A. In cash.

Q. Out of the general funds of the treasury?

A. Yes, sir.

Q. And those funds were made up, in large part, of the moneys realized from the bonds sold as shown upon Exhibit E–Scott, I suppose?

A. May have been,—just simply taken from the cash in the treasury and paid out in this manner.

Q. How much was paid in cash, actually, for the stock and bonds in those three items? State separately.

A. The $7000 stock and $144,000 in bonds of the Minnesota Transfer Railway Company cost the old company and the present company combined $165,845.95.

Q. What do you mean by "cost the old company and the present company combined"?

A. The Railway Company purchased $7000 worth of stock and $63,000 in bonds which cost them $69,823.89. They ex-

pended in construction, in addition, $32,022.06, for which they received 32 bonds, or a total expenditure of $101,845.95, for which they received $7000 in stock and $95,000 worth in bonds. The present Company, when they took charge of the property or received it from the receivers, the treasurer in taking up that $166,000 on the books of the present Company—

Q. Now, that $166,000—there is no $166,000 so far given?

A. Yes, sir, there is. The par value is $102,000, costing $101,845.95; they took up the stock and bonds of which the par value was $102,000 (or actual cost $101,845.95) at $75,000; and the entry reads, "For the market value of the bonds and stock at the time the entry was made upon the books of the present Company."

Q. That is to say, that before the present reorganization, the old company, at a cost in round numbers of $102,000,—is that it?

A. Yes, sir.

Q. —acquired $95,000 of the bonds and $7000 of the stock.

A. Yes, sir.

Q. Now, upon reorganization this stock was transferred to the present Company, is that right,—this stock and bonds?

A. Yes, sir.

Q. For $75,000?

A. No, sir.

Q. For how much?

A. That is what they took up on their books, representing the market value, the actual cost to the present Company of the bonds and stock; I don't see how it could be determined, but they did receive securities of the par value of $102,000.

Q. Yes, and they charged them on their books at $75,000 you say?

A. Yes, sir.

Q. And, as a matter of fact, they acquired the title to those upon the reorganization, the reorganization committee having

acquired them, with the other property, on foreclosure?

A. Yes, sir.

Q. So that you don't know, as a matter of fact, how much was paid by the old company for that stock?

A. Yes, sir, I do.

Q. By the present Company I mean.

Mr. BUTLER: The whole property went over together.

Mr. DURMENT: The whole property went over together.

WITNESS: And cost $101,845.95, originally; actual cost.

Q. That is it; it cost the original company $101,845.95?

A. Yes.

Q. And when it was taken over by the new Company (the present Company) it was taken over as a part of the entire property and carried on the books at a lower figure; carried on the books as $75,000?

A. Yes, sir.

Q. But it was not taken over at any particular figure, and no additional cash was paid by the present Company other than what was paid in the general purchase?

A. Up to that time.

Q. Up to that time. Now, that was 95 bonds. You have here 144 bonds; that would be 49 additional bonds. How did the Company acquire those, and what did it pay for them?

A. The present Company advanced $64,000 to the Transfer Company, which was used in improving the property and in the making of additions. Their treasury was reimbursed by the issuance of 64 bonds by the Transfer Company and placed into the treasury of the Railroad Company.

Q. And what has become of the other fifteen bonds which they got?

A. They were sold in April, 1908.

Q. What was realized?

A. Five per cent. discount.

Q. Sold at 95?

A. Yes, sir.

Q. Then, as a matter of fact, this total $165,845.95,—is that the amount?

A. Yes, sir.

Q. —which you say it cost the old and the new company for this stock and bonds, was what it cost the old and new company for the stock and bonds shown in this exhibit and $15,000 additional, par value of bonds?

A. Yes, sir, that is correct.

Q. Now, as to the $103,000 St. Paul Union Depot Company's stock, what was paid for that?

A. $103,600.

Q. Paid at the par value?

A. Yes, sir.

Q. Now, turn to page 1, Exhibit 7-A. This Exhibit 7-A starts with the statement that the cost of the property to the present company upon the reorganization last made, (in 1894, I think it was) was $22,781,504.42?

A. Yes, sir.

Q. And the other items on there to the left under the heads of "Stock," "Bonds Assumed," "Obligations Paid," and so on down, is the detail of that gross sum, is it?

A. Yes, sir.

Q. Upon the reorganization, the Company issued $2,500,000 of first preferred stock?

A. Yes, sir.

Q. Which is the first item here on this Exhibit 7-A, but is marked "Retired"?

A. Yes, sir.

Q. They also issued, at that time, as a part of the reorganization, $4,000,000 par value second preferred stock and six million par value common stock?

A. Yes, sir.

Q. That made a total of $12,500,000, par value, of stock is-

sued preferred and common?

A. Yes, sir.

Q. They also assumed the payment of the bonds mentioned on page 1, Exhibit 7-A, under the head Bonds Assumed, aggregating $4,718,000, did they not?

A. Yes, sir.

Q. They also issued $5,282,000, par value, of first consolidated bonds, did they not?

A. Yes, sir.

Q. And out of the money which was realized for this first preferred stock and the money which was realized upon the bonds so issued, the obligations of the Company which were outstanding and taken care of in the reorganization proceeding were paid, and the expense of the reorganization was paid?

A. Yes, sir.

Q. Now, I notice under the last heading here, "Additions made later by means of funds procured through issuance of 5,282 first consolidated bonds, equipment, real estate, and discount, Lake Park Hotel property, redemption of Kenwood property," totaling $868,615.24. As I understand that item, those were things which were paid out of the money realized from the sale of these $5,282,000 par value of bonds?

A. And the cash realized on the stock assessment, represented by the two and a half million.

Q. I was going to say money realized on the sale of those bonds and for the first preferred stock.

A. Yes, sir.

Q. So then, really, according to this page, the cost to the present Company of the properties, which it acquired upon the reorganization, and these other properties, acquired as shown here in the $868,615.24,—that is, the total cost of that, was $22,500,000 in securities of the Company in stocks and bonds?

A. Yes, sir.

Q. As I understand this first page of Exhibit 7-A, however,

there was not realized $22,500,000 in cash for those securities, but on the $2,500,000 of preferred stock they were sold at a discount of $133,185.50.

A. That definition of the item is a little misleading; that is not really discount.

Q. Well, what is it?

A. That represents the difference between the par value of the first preferred stock of two and a half millions and the actual cash received by the reorganization committee up to the time the journal entry was made or the accounting was made with the Railroad Company. Subsequently a large portion of that $133,000 was turned in; in fact, we received some money just this last month (July) where the holders of old stock of the Railway Company turned it in by paying the 25 per cent. assessment and in addition a fine, and receiving the stock of the present Company.

Q. Well, still, so far as the cost of the road was concerned at the time it was acquired, at the time of the reorganization, there had been received for the purpose of that purchase or acquisition $2,500,000, less $133,185.50?

A. Yes, sir.

Q. And I find here "Discount on first consolidated mortgage bonds $500,000." That means, as I take it, that there was realized in cash on the $5,282,000, par value of bonds, $500,000 less than the face?

A. Not exactly, no.

Q. Well, what does that mean?

A. That means the discount on five millions of that $5,282,000 issue.

Q. Was there a further discount on the two hundred and eighty-two thousand?

A. No, they were sold at a profit.

Q. Before or after the reorganization were they sold at a profit?

A. After.

Q. Only five millions of them were used in the reorganization, then?

A. At the time, yes, sir.

Q. So then, so far as the cost of the properties to the present road is concerned at the time of the consolidation, there was $282,000 par value of bonds which were not converted or used until after the reorganization?

A. There is a question that comes to my mind, raised by yours, as to whether the amount realized from that $282,000 is included in the expenditures shown in that last total of $868,000. I am not clear. It may be there. If not there it is in—

Q. Well, if not there, then the Company took those $282,000 as its property and disposed of them subsequently and used the money?

A. Yes, sir.

Q. And in the actual cash received from the five million bonds, though, there was only four and a half million received?

A. In cash.

Q. In cash, yes. That would be $500,000 off. Now, we have here, then, an item of $502,314.27, expense of reorganization. What is that expense of reorganization?

A. Expenses incurred by the committee in connection with the reorganization.

Q. Then while it was an expense incident to the reorganization, it was not represented really by work done in the body of the road nor by equipment, nor tangible property?

Mr. BUTLER: It wasn't earned by transportation, you mean?

Mr. DURMENT: What I mean is that it didn't go in to buy any of what is the road; in other words, it is not a part and parcel of construction.

WITNESS: Not of construction, but I should think it would be items of a liability nature that the present Company assumed under the reorganization plan, and other personal expenditures.

Q. Yes, there would be a question between the Complainant in this case and the Defendants whom I represent as to whether that is properly chargeable as a part of the cost of the road, and for that reason I want to get out just the nature of the items. The great bulk of these sums charged on this page 1 of Exhibit 7–A, are what was actually paid for transfer of the physical properties and went in to purchase tangible property. This item, while it was paid, was, as I understand it, an expense of various sorts incident to the reorganization and didn't represent additions or betterments to the road, as such?

A. It may include some such items; I am not prepared now to say whether it did or not.

Q. Do your books show the items of that expense of $502,314.27?

A. I don't know whether they do in detail or not.

Q. Don't know whether they show anything more than that?

A. I couldn't say positively.

Q. It appears, then, does it not, from your testimony in connection with this Exhibit 7–A, page 1, that to acquire the properties which this company acquired upon reorganization, it gave four million second preferred stock, six million common stock, and used $4,500,000 of money received from the sale of $5,000,000 par value of the first consolidated mortgage bonds, and $2,366,814.50, money received from the first preferred stock, and assumed $4,718,000 of mortgage indebtedness?

A. Yes, with perhaps the exception of $282,000 which may have been expended for tangible properties; that I am not in position now to say. Also, further, the item of $133,185.50, entered there as a discount and omitted from the figures in the question, has been since realized upon to a large extent and is still being realized upon, so that the cash item of $2,366,814.50 would not cover the entire amount of cash received through the issue of the first preferred stock of two and a half millions.

Q. Your suggestions would be true, probably, as to the final results as to the receipts from those securities, but my question is confined to the situation of affairs at the time the present Company took over these properties on reorganization.

A. With that explanation, I should answer yes.

Q. That is to say, that at that time this Company had expended or did expend for acquiring the properties which it took over on reorganization the $4,000,000 of second preferred stock, the $6,000,000 common stock, the $4,500,000 received from the sale of $5,000,000 of first consolidated mortgage bonds and $2,366,814.50 received from preferred stock in money up to that time, and by assuming $4,718,000 mortgage indebtedness?

A. Yes, sir.

Q. Now, it also appears from Exhibit 7-A, page 1, that out of the moneys so received,—that is, out of the $4,500,000 received on these five million bonds, and the $2,366,814.50 received on account of the preferred stock,—there was paid $502,314.27, net expense of reorganization?

A. Yes, sir.

Q. This $652,817.54, cost of "equipment," purchased out of the $4,500,000 realized from the bonds sold and the moneys realized on the preferred stock, was equipment purchased after the reorganization and after the reorganized or present Company had taken over the properties, was it not?

A. Yes, sir.

Q. And this Lake Park Hotel property, was also purchased out of moneys received out of the $4,500,000 and the $2,366,814.50 received from sale of stocks and bonds, on account of this?

A. Yes, sir.

Q. And was this money which redeemed the Kenwood property paid out of the same moneys?

A. Yes.

Q. What was that Lake Park Hotel property?

A. Hotel property located on the shores of Lake Minnetonka.

Q. And what was that Kenwood property, what was the nature or character of it?

A. Payment of taxes and penalties that had accrued upon the property that payment of had been neglected.

Q. But what was the nature of the property, what kind of property was it?

A. Real estate.

Q. Vacant and unimproved?

A. Yes, sir.

Q. Where did it lie,—on your right-of-way? Was it a part of your right-of-way?

A. Close to it.

Q. But not a part of it?

A. No, sir, not a part of the right-of-way.

Q. For what purpose was it used at the time?

A. Not used at all, but I don't know for what purposes it was intended to be used.

Q. Now, I find here also on this exhibit an item of $4,900.43 for real estate, which was apparently paid out of the same money; that is, out of the money realized in the same way. What was that real estate?

A. Of the same nature.

Q. It was vacant and unoccupied, or was it used for railroad purposes or what?

A. The right-of-way property.

Q. That was right-of-way property?

A. Yes, sir.

Q. Where does this item "discount on $2,600,000 first and refunding mortgage bonds sold in June, 1899, to retire first preferred stock $182,000," come into this account?

A. Because of the first preferred stock being paid in cash

out of the funds of the treasury and the treasury reimbursed by the issuance of bonds, which when they were sold were sold for ninety-three cents on the dollar.

Q. That amount of bonds and that item of discount are shown in your Exhibit E, I believe?

A. Yes, sir.

Q. Was this money which was paid out of the treasury to redeem the preferred stock paid from the money in this $4,500,000 which was realized from the sale of the first consolidated mortgage bonds and the $2,366,814.50 realized from the sale of preferred stock?

A. No, sir, I should say not.

Q. Now, in the properties which were acquired upon the reorganization in 1894 there was included, in addition to the right-of-way and depot grounds and equipment, this $7,000 par value of the Minnesota Transfer Railway Company stock and $95,000 par value of the Minnesota Transfer Railway Company bonds, was there not?

A. Yes, sir.

Q. And they were carried on the books when you made up your statement at $75,000?

A. Yes, sir.

Q. Now, this St. Paul Union Depot Company stock: Was that owned by the old company before reorganization and acquired by the new company on the reorganization?

A. No, sir.

Q. That was purchased since?

A. Yes, sir.

Q. As I make it, the total of the second preferred and the common stock and the money realized from the sale of five million first consolidated mortgage bonds, and the money realized from the preferred stock up to the time of the reorganization, together with the bonded indebtedness assumed by the new company on reorganization is $21,584,814.50?

A. Yes, sir.

Q. If it be true that this $502,314.27, net cost of reorganization, and the $17,785.22 for the hotel property, and the $11,112.05 for the other vacant real property, and the $75,000 market value of the stock and bonds of the Minnesota Transfer Railway Company acquired on reorganization, are not to be considered as part of the cost of the railway properties to the reorganized Company acquired at the time of reorganization, we would take the sum of those, or $606,211.54, from the $21,584,814.50 to get the cost to the reorganized road of the railroad properties acquired upon reorganization, would we not?

A. I fail to understand why you include the item of $75,000 bonds and stock of the Transfer Company when that amount does not enter into the items aggregating $21,584,814.50.

Q. Well, I don't know that it is necessary you should in order to answer the question, but the reason for that is this: That was a part of the property acquired by the purchase on reorganization; you took over the railroad properties including those stocks and bonds. Now, our contention is that they are not part of the railroad and not to be taken into consideration as a part of the value of the railroad for the purpose of this case.

A. The items stated in the question, if deducted from the $21,584,814.50, would leave the result $20,978,602.96.

Q. That is, the total of the items I have mentioned is $606,211.54?

A. Yes.

Q. You were asked to produce the stockholders' agreement for reorganization. Have you it here?

A. Yes, sir.

Q. Will you produce it?

Witness produces paper marked "Defts' Ex. F–Scott."

Q. Exhibit F, which you have produced, is the stockhold-

ers' agreement under which the reorganization was finally completed, is it not?

A. Yes, sir.

Q. I notice that refers to a former agreement of which this is an amendment. We will ask you to produce the original of which this Exhibit F is an amendment that we may inspect it.

A. I will do so.

Q. I find upon inspection of Ex. F–Scott that, in subdivision "Fourth," page 3, in the second paragraph, the reorganization committee was required to turn over to the reorganized company any excess of cash or securities remaining in the hands of the committee upon the completion of the reorganization. Did that reorganization committee ever turn over to the Minneapolis & St. Louis Railroad Company any cash or securities under that provision?

A. Both.

Q. I will ask you to make a statement showing us just what cash and securities the committee turned over under that provision of Ex. F.

A. Yes, sir.

Q. I find that subdivision "Ninth" of Ex. F, page 4, required the reorganization committee to file a complete report of its doings with the Minneapolis & St. Louis Railroad Company within a year after its organization. Did it ever make such report to the Minneapolis & St. Louis Railroad Company?

A. I presume they did, the book entries would indicate so.

Q. Can you produce the report?

A. I don't know.

Q. Or a copy of it?

A. I don't know. It may not be on file with the journal entries.

Q. If you haven't it who would have it?

A. I don't know.

Q. Where are the files of your Company, the various records and papers, kept; in your possession or in the possession of some other officer of the Company?

A. Some of those papers might be in some other person's possession than mine.

Q. In whose?

A. I don't know.

Q. Would the secretary probably have it?

A. Possibly.

Q. Where is the secretary's office?

A. New York City. But you had better give me the opportunity to see whether I have them. I say the book records show that such a transaction was done, that they did file their statement, because they did turn over cash and securities.

Q. Will you produce, if it is in your possession, the report, or a copy of the report, made by the committee which is called for in the ninth subdivision of this Ex. F?

A. If I have it, yes sir.

Q. If you haven't it and learn where it is, let us know, so we can have it produced.

A. I will.

Recess until 2 P. M.

AFTERNOON SESSION.

Mr. DURMENT: We offer in evidence, as part of the cross-examination, Exs. D, E and F–Scott.

Q. I notice the last entry on Ex. 7–A, page 3, "Minneapolis & Duluth bonds assumed by the N. P. R'y Company July, 1901, $280,000." What is the explanation of that entry?

A. It is shown as a credit, because the bonds were assumed by the Northern Pacific Railway Company and the property transferred to that company.

Q. That was in the railroad fiscal year ending June 30, 1902, that that was done, was it?

A. I presume so.

Q. What consideration, if any, other than the assumption of those bonds by the Northern Pacific Railway Company, was paid the Minneapolis & St. Louis Company for the transfer?

A. There was no other consideration.

Q. How many miles of that road were transferred in consideration that the Northern Pacific Railway Company would assume the $280,000 bonds?

A. I haven't that information here. I should think that the annual reports to the Commission would show that.

Q. I find in the annual report of the Minneapolis & St. Louis Company to the State of Minnesota for the year ending June 30, 1902, on page 29 of the report, this entry: "Minneapolis & Duluth bonds, $280,000 (in red ink) assumed by Northern Pacific Railway Company, in purchase of track known as the White Bear branch from East Minneapolis to White Bear Lake, 13.09 miles."

A. That would be correct.

Q. I notice on that same page that the cost of the road per mile for construction and equipment was $44,552.89.

A. Yes, sir.

Q. Upon the sale of that 13.09 miles, the Minneapolis & St. Louis road realized only about $21,470 per mile, did it not?

A. Yes, sir.

Q. That $280,000, though, in making up your Ex. 7 and Ex. 7-A, has been eliminated, so that it does not appear in that statement as a part of the cost of the present system?

A. It does not.

Q. The Minneapolis & St. Louis Railway Company went into the hands of the receiver in the year 1885, did it not, in the last receivership proceeding?

A. June, 1888.

Q. That it went into the hands of a receiver?

A. Yes, sir.

Q. And it continued in the hands of the receiver until reorganized and turned over to the present Company in 1894?

A. Yes, sir.

Q. I find in the report of the Minneapolis & St. Louis Railway Company for the year ending June 30, 1888, (that is, the report made to the State of Minnesota), on page 9, a statement that the total cost of the construction and equipment of the entire line was $18,586,447.21; the average cost of road and equipment per mile $50,438.12; total cost of road and equipment in Minnesota, $11,307,994.48; average cost of road and equipment per mile in Minnesota, $50,438.12. Now, this is the sworn report of the officers of that road as to the total cost of construction and equipment, and the average as I mentioned, the 30th of June, 1888, just at the time of the receivership. In your Ex. 7-A you start out with the cost of the property when it was turned over to the reorganized company at $22,781,504.42, or, as I figure it, an increase of $4,195,057.20, over and above the total cost of construction and equipment up to the time the receivership proceedings were instituted. Can you tell us whether there had in fact been added, during the receivership, $4,195,057.20, or any large sum, to the cost of construction and equipment?

A. We could tell what that difference consists of, yes.

Q. Will you please get the information for us showing what that difference consisted of?

A. Yes, sir.

Q. And in what way it was paid, and, if paid in money, whether that full amount in money was paid or whether there was a discount that is included in it.

A. Yes, sir, I will try and analyze just what that exact difference consists of.

Q. We would like to know, if it can be given us from your books, just how much money from the inception of the Minneapolis & St. Louis Railway Company or its predecessors up to

the time of the receivership, had been received from the sales of capital stock, and just how much money, in the same period, had been received from the sales of bonds, showing the par value of the bonds and the discounts. We asked for that information before, as I remember it; have you it here?

A. Yes, sir, I have the amounts here and can so state them, or I can write them up in statement form if you prefer.

Q. Well, I suppose you may as well state them at this time, if you will do it slowly so we can keep track of them. Let us take the stock first.

A. All right. The total, $9,769,700.

Q. That is the par value of stock?

A. Yes, sir.

Q. The cash received?

A. $599,887.50; discount, $1,270,112.50; issued in exchange for stock of the four consolidating companies, $7,899,700.

Q. This $9,769,700, par value, is the par value of the capital stock of all the roads which consolidated?

A. After the consolidation.

Q. Oh, after the consolidation?

A. Yes, sir.

Mr. BUTLER: That is of the stock of the Railway Company, isn't it?

WITNESS: Yes, sir.

Q. This $9,769,700 par value is the par value of the outstanding capital stock of the Minneapolis & St. Louis Railway Company at the time the receiver was appointed, is it?

A. Yes, sir.

Q. And for that the Company received $599,887 in cash?

A. That is one of the items.

Q. And $7,899,700 of the capital stock of the other roads which had been merged into the Minneapolis & St. Louis?

A. Yes, sir.

Q. That stock was canceled, I suppose?

A. Yes, sir.

Q. Was the exchange of the Minneapolis & St. Louis Railway Company's stock for the stock of these consolidating companies effected upon the basis of par for each stock; if not, upon what basis?

A. You have asked for copies of the articles of consolidation, and I have furnished you with one copy of those articles. The detail of that issue of $7,899,700 is provided for in those articles, article No. 7, paragraphs 1 to 5, inclusive.

Q. Either I misunderstood your answer or you misunderstood my question. Now, let us see if this is not the situation: There was outstanding capital stock of the Minneapolis & St. Louis Railway Company, at the time the receivership began in 1888, $9,769,700 par value of the capital stock of that road?

A. Yes, sir.

Q. Was that all common stock or preferred stock and common, or do you remember?

A. It would be both.

Q. Can you tell us how much of each?

A. Preferred, $4,000,000; common, $5,769,700.

Q. $7,899,700 of that outstanding capital stock had been issued in exchange for the capital stock of the consolidating companies, had it not?

A. Yes, sir.

Q. And $1,869,999.50, par value of that stock, so outstanding at the time of the receivership proceedings, had been sold, and $599,887 in cash realized on it?

A. The amounts you have quoted are not exactly correct. The first item should read $1,870,000, even; and the second, $599,887.50.

Q. Then $1,870,000 of the par value of that outstanding capital stock had been sold and $599,887.50 in cash realized for it?

A. Yes, sir.

Q. Now, can you tell us what stock of the underlying or consolidating companies had been exchanged or taken up with this $7,899,700 par value of the stock of the Minneapolis & St. Louis Railway Company outstanding at the time of the receivership proceedings?

A. The Minneapolis & St. Louis Railway Company of Minnesota, 32,000 shares.

Q. Par value $100?

A. That 32,000 shares would be $3,200,000.

Q. In answering this question, please state if you can, the number of shares of the Minneapolis & St. Louis Railway Company which was given for the shares of the consolidating companies you mentioned.

A. $4,000,000 worth of preferred stock of the Minneapolis & St. Louis Railroad Company were issued in exchange for $3,200,000 worth of stock of the Minneapolis & St. Louis Railway Company, being one of the four consolidating companies.

Q. How much of that four millions was common and how much was preferred? if you can state.

The MASTER: That is, there was a Minneapolis & St. Louis Railroad Company at that time?

Mr. DURMENT: Railway company.

The MASTER: Well, he spoke of "Railroad" company.

WITNESS: Of the four consolidating companies, one of them was the Minneapolis & St. Louis Railway Company.

The MASTER: Yes.

WITNESS: And it continued the same name after the consolidation.

The MASTER: Yes. You have used the word "railroad" in one place, so that threw me off.

WITNESS: I was wrong then.

Mr. BUTLER: The articles of consolidation, to which reference is being made in this examination, and which was referred to by Mr. Scott a few moments ago, named the Minneapolis &

St. Louis Railway Company, the Minneapolis & Duluth Railroad Company, the Minnesota & Iowa Southern Railroad Company and the Fort Dodge & Fort Ridgely Railroad Company as parties to the agreement of consolidation.

The MASTER: They all merged into the Minneapolis & St. Louis Railway Company?

WITNESS: Railway company.

Mr. BUTLER: The name appears to have continued the same after the consolidation, as I catch it.

Mr. DURMENT: Defts' Ex. G–Scott is a paper to which the witness was referring in answering the questions with reference to the exchange of stock. The paper is marked "Defts' Ex. G" for identification, but is not offered in evidence at present.

The following question was read, "How much of that $4,000,000 was common and how much was preferred? if you can state."

A. It was all preferred.

Q. And the next.

A. $1,835,000 of the common stock, issued to take up $1,835,000 worth of stock of the Minneapolis & Duluth Railroad Company.

Q. That is, the exchange for the Minneapolis & Duluth Railroad Company stock was made share for share?

A. Yes, sir; $1,200,000 worth of common stock in exchange for $1,200,000 worth of stock of the Minnesota & Iowa Southern Railroad Company.

Q. That was an exchange of stock share for share?

A. Yes, sir; $334,800 worth of common stock in exchange for $334,800 worth of stock of the Fort Dodge & Fort Ridgely Railroad Company.

Q. That was an exchange share for share?

A. Yes, sir.

Q. None of these companies which consolidated at this time paid in any money as part of the exchange?

A. No, sir.

Q. As I make the figures, only $7,369,800 par value of $7,899,700 of the Minneapolis & St. Louis Railway Company's stock outstanding at the time of the receivership proceedings, which you said was issued in exchange for stock of the consolidating companies, was used in making that exchange?

A. Yes, sir.

Q. For what was the $529,900 par value of that stock not accounted for by the exchange issued?

A. I will look it up from the records and advise you.

Q. I understand that, upon the exchange which you have spoken of being effected, the holders of the preferred stock which was issued to the Minneapolis & St. Louis Railway Company on the consolidation were entitled to exchange that preferred stock for an increased amount of common stock of the consolidated road. Was any such exchange ever made?

Mr. BUTLER: I think that if the questions are to be based upon the writing, which is Ex. G, the record should so appear.

The MASTER: Well, gentlemen, I can't control it. You know what your remedy is if it is an improper question.

Mr. BUTLER: Well, I suggest to the witness that when he is giving his understanding from the writing he disclose where he gets it.

Mr. DURMENT: I suggest that the witness answer my question.

The MASTER: If the witness understands the question, it is his duty to answer it the best way he can.

A. The articles of consolidation, Ex. G, provide for that privilege, but whether or not any such exchange was made I don't know.

Q. Will you look up and let us know, and if so, give us the number of preferred shares which were so exchanged and the number of common shares issued in lieu thereof?

A. I will endeavor to do so. Perhaps that will explain this other difference.

Q. The provision which you speak of made in the articles for the exchange, provided (page 11, first paragraph) that the holder of the preferred stock might return or surrender one-fifth of the number of shares of preferred stock received by him and receive in the place of each share of such preferred stock so surrendered five shares of the common stock of the consolidated company.

A. That is in accordance with Ex. G, Article 7, page 11.

Q. And that is what we have asked you to look up and determine—whether any exchange was effected under that provision.

A. Yes, sir.

Q. Let your statement show, also, if there was such an exchange, what disposition was made of the preferred stock so turned into the Company and how much, if anything, was received for it on the final disposition of it.

A. Yes, sir.

Q. Can you tell us, from any information you have with you here at this time, how much money was received by the original Minneapolis & St. Louis Railway Company for the $3,200,000 par value of its stock which was exchanged on this consolidation, or how much money was received by the Minneapolis & Duluth Railroad Company for the $1,835,000 par value of the stock which was exchanged by it on this consolidation (that is, of the original stock); or how much money was received by the Minneapolis & Iowa Southern Railroad Company for the $1,200,000 shares of its stock which it gave in exchange for the Minneapolis & St. Louis Railway Company's stock, or how much money was received by the Fort Dodge & Fort Ridgely Company for the $334,800 par value of the stock which it exchanged for the Minneapolis & St. Louis Railway Company stock?

A. No, for the reason that this consolidation was effected in 1881 and the records of the four companies are not in my possession.

Q. Then you will not be able to furnish that information as to the stock of either of these consolidating companies from any information you have here or from any records to which you have access?

A. I cannot. I might be able to do it for one of them.

Q. For which one?

A. The Minneapolis & St. Louis Railway Company, which was one of the four.

Q. Will you get that information and produce it for us if it is accessible to you?

A. Yes, sir, but it would only be that part of it, you know.

Q. You are not able, at this time, to give us any more information than you have already given as to the amount of cash which was received by the Minneapolis & St. Louis Railway Company on account of capital stock issued by it or its predecessor companies, prior to the receivership?

A. No, sir.

Q. You may now give us the amount of cash received by the Minneapolis & St. Louis Railway Company and its predecessors on account of bonds issued prior to the receivership proceedings, giving us, as far as you can, the par value of the bonds issued, the amount of money received upon them, and when.

A. The total amount of issue by the Railway Company was $9,213,000 par value, for which they received in cash $8,303,721.45, leaving the discount $909,278.55.

Q. That was the total issue by the consolidated company prior to the time of the receivership?

A. Yes, sir.

Q. Can you give us the items of that?

A. How much in detail?

Q. Were they all issued under one mortgage and for one purpose?

A. No, sir.

Q. Well, we might have each issue, then, the date of it and amount of it and for what purpose issued.

A. The Minneapolis & Merriam Junction, $455,000,—no discount; the Merriam Junction & Albert Lea, $950,000,—discount, $173,253.55, cash $776,746.45; Iowa Extension, $1,015,000,—no discount, all cash; Southwestern Extension, $636,000,—discount, $54,000, cash, $582,000; Pacific Extension, $1,382,000,—discount, $172,750, cash, $1,209,250; Minneapolis & Duluth, $280,000—

Mr. BUTLER: Is that the same $280,000 assumed by the Northern Pacific later on?

WITNESS: Yes, sir;—all cash; construction mortgage, $795,000,—no discount; improvement and equipment,—

Q. Mortgage, is that?

A. Yes, sir;—$3,200,000,—discount, $400,000, cash, $2,800,000; income mortgage, $500,000,—discount, $109,275, cash, $390,725. Making the total amount of issue $9,213,000, discount, $909,278.55, cash, $8,303,721.45.

Q. Now, for what were the $455,000 Minneapolis & Merriam Junction, and the $280,000 Minneapolis & Duluth bonds issued that you have just referred to?

A. The $455,000 were issued to take up a prior mortgage of $700,000, which the books show were sold for $466,689.45. The holders of the $700,000 worth of bonds by agreement accepted $455,000 worth of bonds of the present Company, which represented a reduction of 35 per cent.—

Q. Upon their face?

A. —on their face value of $700,000, or a little less than what was realized by the company in the first place when those bonds were sold. The $280,000 were issued in payment of the construction cost of the Minneapolis & Duluth Railway Company. These are all the bonds that were subsequently transferred, together with the property, to the Northern Pacific Railway Company.

Q. For what was the $950,000 par value of bonds which you spoke of as the Merriam Junction and Albert Lea bonds issued?

A. For the construction cost of the line between Merriam Junction and Albert Lea.

Q. Was that line built by the Minneapolis & St. Louis Railway Company, or purchased by it from some other company?

A. Built by it, I should say.

Q. And what did it cost in cash to build it?

A. I would understand from the records—

Mr. BUTLER: When was that issue made?

WITNESS: In 1878. What is shown here as the cash received would represent the construction cost.

Q. Your books don't show anything more than that as to the cost of that road?

A. No, sir; too old.

Q. For what was the $1,015,000 par value of bonds which you spoke of as the Iowa Extension issued?

A. These bonds were issued in June, 1879, covering the line of railway from Albert Lea, Minnesota, to Fort Dodge, Iowa.

Q. But in exchange for what were they issued?

A. The records show for the construction cost of that property.

Q. What do the records show was the construction cost of that property?

A. $1,015,000.

Q. All in one item or in separate items?

A. No, sir; we cannot give the details, that is, of the items of cost.

Q. Do your records show what was the actual cost of construction of that line?

A. Not, in detail, no, sir.

Q. They show nothing except that these bonds were issued for the construction of the road?

A. Yes, sir.

Q. For what were the $636,000 par value of bonds which you spoke of as the Southwestern Extension issued?

A. That mortgage was issued December 1, 1880, covering a line of railway from Fort Dodge, Iowa, southwesterly to Angus, Iowa.

Q. In exchange for what were they issued?

A. The books show the sale of the bonds for cash, $582,000, with a discount of $54,000.

Q. Do your books show what was the actual cost of construction of that Southwestern Extension other than as may be inferred from the amount received from those bonds?

A. Not the detailed items of cost, no, sir.

Q. Do they show anything about the cost of it other than the fact that this money was realized for that purpose?

A. No, sir.

Q. In exchange for what were the $1,382,000 par value of bonds which you spoke of as Pacific Extension bonds issued?

A. That issue was made in April 1, 1881, and covers the line of railway from Hopkins, Minnesota, westerly to Morton, Minnesota. The records show that the bonds were sold for 87½ per cent., realizing cash $1,209,250, or the discount in money of $172,750.

Q. Do your books show what was the actual cost of construction of that Pacific Extension other than would be inferred from the fact that this money was realized on the sale of these bonds?

A. I don't think so. We might possibly have those records, but I don't believe we have.

Q. Are all the lines or branches of railroad referred to here as Minneapolis & Merriam Junction, Merriam Junction & Albert Lea, the Iowa Extension, the Southwestern Extension, the Pacific Extension, at this time part and parcel of the Minneapolis & St. Louis railway system?

A. Yes, sir.

Q. None of them have been disposed of?

A. No, sir.

Q. Now, the next item of $795,000 construction mortgage bonds— when were they issued and for what; that is, in exchange for what?

A. The general ledger shows "By cash, $795,000." That is all the information we have.

Q. Then the only information your books give as to that amount is that that many mortgage bonds were disposed of and that much cash received?

A. Yes, sir.

Mr. BUTLER: What was the date of the issue?

WITNESS: The date is not shown here.

Q. Your books do not show for what purpose the money was used?

A. For construction.

Q. Well, what construction?

A. I would have to consult the records before I could answer that question.

Q. I will ask you to look it up and let us know, if your books show, for what that $795,000 realized on those bonds was used. The next item of those bonds is $3,200,000, on which you say the Company received $2,800,000 in money. You speak of them as improvement and equipment bonds.

Mr. BUTLER: With respect to the last issue referred to in the examination, which was $795,000 of construction mortgage bonds, you were unable to give the date. Was that before or after the reorganization of 1881, or can you tell from the memoranda which you have with you?

WITNESS: No, sir, I can not.

Q. When and for what purpose, or in exchange for what, were the $3,200,000 bonds referred to in my question issued?

A. They were issued in 1887 and for the purpose of construction and acquiring of equipment. The records show that

they were sold, realizing cash $2,800,000, the discount being $400,000.

Q. Do your records show for what construction and what equipment the money so realized was in fact used?

A. No, sir, I would not have the details. I would not know any more about it than what the general ledger discloses, that they were issued for the purpose of construction and for the acquiring of additional equipment.

Q. But no books in your possession would show for what particular construction or equipment they were used, nor the amount used for equipment and the amount used for construction?

A. The construction records are not in my possession. Being old, they have become misplaced or lost.

Q. The next one is what you referred to as the income mortgage, $500,000 par value. Will you state when and for what purpose those bonds were issued and for what purpose the money realized from them was used?

A. The ledger shows that they were issued for construction purposes and were sold at various dates and rates, realizing cash $390,725, the discount being $109,275.

Q. Your books do not show for what construction the money was in fact used?

A. Not the detailed items of cost of construction, no, sir.

Q. Well, for what particular construction, what part of the road was constructed with that money, or what particular improvements were made?

A No, sir, that dates away back. I think that is one of the very oldest issues, and we have not the construction ledgers on that.

Q. Can you give us the date of the mortgage?

A. We could do that, but I haven't it here. I have reference only to Ledger A, which would indicate it was away back somewhere in the 70's.

Q. Will you please get the date for us?

A. Yes, sir.

Q. I notice that of these bonds you have just been enumerating $455,000 of them were issued to take up an older outstanding mortgage of $700,000. Were any bonds secured by an older mortgage taken up or retired by any of these bonds other than by the $450,000 you have spoken of?

A. That is the only one of that kind.

Q. I notice in Exhibit D–Scott, on page 2, an item of $315,000, another item of $15,000, another item of $117,000, bonds issued for Minneapolis & Merriam Junction bonds retired. Are the bonds which were retired by the issuance of these first and refunding bonds, referred to in Exhibit D the $455,000 Minneapolis & Merriam Junction bonds referred to in your last testimony?

A. No, sir.

Q. What bonds were they?

A. Well, perhaps I misunderstood your question. In Exhibit D those bonds are of the first and refunding issue, but they were issued to reimburse the treasury for the same amount of the old issue of Minneapolis & Merriam Junction bonds which matured on January 1, 1907, and are shown or given in the testimony which we have just been going through.

Q. Then these $455,000 bonds which you have just testified were issued to take up the old issue of $700,000 were themselves paid off, and, to reimburse your Company for the money used to pay them off, these issues which I have just referred to in Exhibit D were issued?

A. Yes, sir.

Adjourned until Friday morning, August 28th.

FEDERAL BUILDING, Friday, August 28, 1908, the hearing was resumed at 10 A. M.

LEMUEL G. SCOTT,
recalled for further cross-examination, testified:

By Mr. Durment:

Q. Mr. Scott, have you been able since the last session to get any information as to how much money was realized by the Minneapolis & St. Louis Railway Company for the $3,200,000 par value of its stock which it exchanged for the $4,000,000 par value preferred on the consolidation?

A. No, sir.

Q. Do you mean by that that your books don't show it or you haven't had time?

A. I haven't had time to examine them.

Q. Leaving out of consideration, for the present, the capital stock of the consolidating roads which were consolidated into the Minneapolis & St. Louis Railway Company, it is true, is it not, that the only money realized upon capital stock of the Minneapolis & St. Louis Railroad Company or of its predecessor the Minneapolis & St. Louis Railway Company, which could have been applied to the construction of the road, was the $599,887.50 realized from the sale of $1,870,000 par value of the consolidated company and the $2,500,000 realized on the preferred stock of the present Company?

A. Yes, sir.

Q. And that total is how much?

A. $3,099,887.50.

Q. Yesterday afternoon, as I understood your testimony, with reference to the bonds or money received upon bonds prior to the receivership proceeding, you gave a list of all the money which had been realized upon bonds issued, either by the Minneapolis & St. Louis Railway Company or by the companies which were consolidated into that company; is that true?

A. I am not sure now whether all of the consolidating com-

panies had bond issues or not; I don't think they did; I think it was a stock construction proposition, but I would like to look into that.

Q. Well, I will ask you to get for us, and give us at the next session after to-day, the bond issues with the amount of money in actual cash received on them, or a statement of what other than money was received for them where the issues were made by any of the consolidating companies which have not been shown in your testimony already.

A. Yes, sir.

Q. Is it not true that out of the bond issues of the Minneapolis & St. Louis Railway Company and of the consolidating companies, as to which you testified yesterday, issued prior to the receivership, there was realized only the following amounts in money which could have been used in the construction of roads or purchase of equipment; $466,000 realized from an issue of $700,000 which had been made by one of the consolidating companies prior to the consolidation; $776,746.45; $1,015,000, $582,000, $1,209,250, $280,000, $795,000, $2,800,000 and $390,725?

A. Yes, unless there are some bond issues of consolidating companies that I overlooked in the answer yesterday. The total of the items mentioned in the question is $8,315,410.90.

Q. It appears from your Ex. E, that the Minneapolis & St. Louis Railroad Company after it took over the property from the receivers and down to April 30, 1908, had issued various bonds (first and refunding mortgage bonds) and sold them, for which it had received $8,438,150 in money, and that, as I understand it, is the total amount of money which had been realized by the Minneapolis & St. Louis Railroad Company from sales of bonds issued by it up to April 30, 1908.

A. Yes, but this amount, of course, does not include $1,240,000 worth of bonds that are still in the treasury and which will be realized upon sooner or later.

Q. But it is the total amount of actual cash received up to that date from sale of bonds issued by this Minneapolis & St. Louis Railroad Company?

A. Yes, sir.

Q. Out of the moneys realized from the sales of those bonds, the first preferred stock of $2,500,000 was redeemed, was it not, or paid off?

A. Yes, sir.

Q. When that was redeemed or paid off, how much principal and dividend was paid to redeem that $2,500,000 preferred stock?

A. Par value, in principal.

Q. How much in dividends?

A. None to redeem it.

Q. How much dividends had accrued that was unpaid when it was retired?

A. I presume none that had accrued but what were paid. All dividends when declared are paid. I know that dividends were declared and paid on the first preferred stock of two and one-half millions, and am ready to state the amount.

Q. You may state the amount and when the dividends were paid.

A. $520,833.33 was declared and paid in dividends on the first preferred stock of $2,500,000, as follows: June, 1895, $83,333.33; December, 1895, $62,500; June, 1896, $62,500; December, 1896, $62,500; June, 1897, the same amount; December, 1897, the same amount; June, 1898, the same amount; December, 1898, the same amount.

Q. Then out of this $8,438,150 there was paid $2,500,000 to retire that amount of first preferred stock, was there not?

A. Yes, sir.

Q. Is it not true that out of that $8,438,150 there was also paid $447,000 for the redemption of Minneapolis & Merriam Junction bonds included in the $455,000 issue you testified to yesterday?

A. No, sir; the money realized included in the $8,438,150 was probably not used in the redemption of $447,000 of the Minneapolis & Merriam Junction bonds.

Q. What money was used, probably?

A. Paid out of the general treasury.

Q. And an equivalent amount of money was replaced in the treasury out of this $8,438,150, was there not?

A. There is really no relationship between the actual cash payment of the $447,000 in settlement of the Minneapolis & Merriam Junction bonds that matured and the $8,438,150. That money, the $8,438,150 was expended prior to the issuance of the bonds and prior to the date of their sale, the bonds were issued to recover money that had been expended; but those issues were all made prior to January 1, 1907.

Q. Well, isn't this the fact: That, prior to September, 1907, the Minneapolis & St. Louis Railroad Company had, out of the funds in the treasury, paid off $447,000 par value of the prior issue of $455,000 bonds issued against the Minneapolis & Merriam Junction branch?

A. Yes, sir.

Q. And the moneys realized on the bonds from which a total of $8,438,150 was realized went into the general treasury to reimburse the Company for that expenditure as well as others?

A. No, sir.

Q. It did not?

A. No, sir.

Q. How was the Company reimbursed then, for that expenditure?

A. By the issuance of bonds subsequent to the date of this last sale in June, 1907; that is, the $447,000 would be included in the $1,240,000 shown as still in the treasury and unsold.

Q. Yes, but wasn't there in the treasury money realized from prior sales of bonds with which they were enabled to

make this payment of $447,000?

A. No, sir.

Q. Where did they get the money, then?

A. By the issuance of notes.

Q. Then all the moneys realized from these various bond issues where the bonds had been theretofore sold had been expended?

A. Yes, sir.

Q. And you borrowed money to pay off that $447,000 of the Minneapolis & Merriam Junction bonds?

A. Yes, sir.

Q. And still have the bonds in your possession?

Mr. BUTLER: That is the refunding bonds?

Mr. DURMENT: Yes.

Mr. BUTLER: In the treasury?

Mr. DURMENT: In the treasury.

WITNESS: Yes, sir.

Q. Have the notes been paid?

A. No, sir.

Q. The notes are still outstanding for that, are they?

A. At least for the greater part of it; in fact, we have notes outstanding now far exceeding $447,000.

Q. Oh, yes, that is probably true, but have the notes on which you raised the money to pay the $447,000 been paid?

A. Oh, those notes have been paid and renewed; they carry these notes from time to time. The short-term notes fall due, some of them, every month and then they are renewed, keep agoing; but the amount is still being carried because of the recovery being still in first and refunding bonds that are now in the treasury.

Q. Then out of the $8,438,150 realized from the sale of bonds since the receivership only $5,938,150 could have been used for the construction of the road or the purchase of equipment?

A. No, sir, I should say the entire amount was used for that purpose.

Q. Well, but $2,500,000 of it was used to retire first preferred stock?

A. I now understand your question. Yes, sir.

Q. Then it is true, is it not, that there was realized from the sale of the capital stock of the Minneapolis & St. Louis Railroad and of its predecessor, the consolidated Minneapolis & St. Louis Railway Company, and from the sale of bonds issued by the Minneapolis & St. Louis Railroad Company and by the consolidated Minneapolis & St. Louis Railway Company and its consolidating companies, only $17,353,448.40 in money which could have been used to construct the road or purchase equipment?

A. Yes, unless it is found that there were some issues made by the consolidating companies that the money realized therefrom is not included in the information already given.

Q. That is, you mean by money realized from bonds which you possibly have overlooked?

A. Yes, sir.

Q. And which you are going to inquire about?

A. Yes, sir.

Q. Can you tell us what property the consolidated company got from each of the four consolidating companies; that is, what in the way of equipment, what length of constructed road, and what other property it got?

A. That can be furnished.

Q. Well, we will ask you to furnish us that, if you will.

A. I think we can furnish that information but I am not sure.

Q. And, so far as your records show, when you furnish the information as to the property received by the consolidated company from each of the consolidating roads, the names of the officers of each of the roads.

A. Yes, sir.

Q. You were also asked to furnish us a statement of the amount paid to get passenger business. This request was made in connection with Ex. 13-Scott. Have you that?

A. No, sir; we are working on it.

Q. Please turn to Ex. 16. Does Ex. 16 include all the tonnage of merchandise in carload shipments or classes which was hauled by the Minneapolis & St. Louis road from April 1, 1906, to March 31, 1907, between points in Minnesota; that is, all the merchandise of the character mentioned in the heading of the exhibit which was hauled between stations in Minnesota, the haul originating and terminating in Minnesota?

A. Yes.

Q. The same thing is true as to Ex. 17, is it not, for the period shown on that exhibit?

A. Yes, sir.

Q. I understand that the percentage of decrease shown on Exs. 16 and 17 is percentage of decrease in revenue from the particular hauls mentioned in the exhibit, and not that percentage of the total revenues of the road.

A. Yes, sir, these three exhibits.

Q. Now, will you turn to Ex. 14, please. Do the figures on Ex. 14 show the earnings and loss on the entire traffic of the Minneapolis & St. Louis road upon the commodities mentioned in the exhibit for the period July 1, 1905, to July 30, 1906?

A. It includes earnings on the commodities that were affected by the act of the legislature, Chapter 232.

Q. That is apparent, but does it include the earnings upon all traffic hauled by the Minneapolis & St. Louis road over its lines upon those particular commodities, or only such traffic as the officers of the road considered there would be a loss on?

A. Only such traffic that the officers considered there would be a loss on.

Q. Taking the first item of soft coal, for instance, I suppose

that that includes the earnings on all intrastate hauls of soft coal in Minnesota during the period mentioned in the exhibit?

A. That would be affected by the act.

Q. Well, would there be any soft coal, intrastate haul, in Minnesota during that period, that would not be affected by the act if it were in force?

A. I couldn't answer that question.

Q. Then, as I understand it, during that period there may have been hauled soft coal, intrastate shipments in Minnesota, which is not included in this item here of $4,402.18?

A. There might have been some shipments; I don't know.

Q. Take the item soft coal Minnesota interstate traffic, $96,593.62. Were there any hauls of Minnesota interstate traffic made by your road during the period covered in this exhibit which do not enter into this item of $96,593.62?

A. There might have been.

Q. Take the item under soft coal "Other interstate traffic $26,265.85." Were there any other interstate hauls of soft coal made by your road during the period covered by this exhibit which do not enter into this item of $26,265.85?

A. There might have been.

Q. That same thing is true as to each of the commodities mentioned on this exhibit, is it not?

A. Yes, sir.

Q. In the case of no commodity there mentioned, either for the Minnesota state traffic or the Minnesota interstate traffic or other interstate traffic, do the amounts include all traffic of that description?

A. I don't know; I don't think they do.

Q. Then the percentages of loss as computed there and shown on this Ex. 14 do not necessarily represent the percentage of loss in revenue from hauls of commodities of the character mentioned on the exhibit?

A. Not of the total carriage of the commodities so shown.

Q. But it is simply the percentage of loss on the earnings from the particular hauls which have entered into the gross earnings for the particular commodity or particular hauls mentioned on the exhibit?

A. Which the officials of the Company figured there would be a loss because of the Act.

Q. As to this Ex. 14, the period covered by that exhibit was the year in which this road had its heaviest freight traffic since the reorganization or receivership, wasn't it?

A. No, sir.

Q. What was the year where you had your heaviest freight traffic?

A. The year ending June 30, 1907.

Q. Then there was a heavier traffic the succeeding year than there was in this year?

A. Yes, sir.

Q. On Ex. 8, I find you have made a statement of division of the cost of the property of the Minneapolis & St. Louis road at one place on the basis of "gross revenue of the Minneapolis & St. Louis only." What is meant by "on the basis of the gross revenue, M. & St. L. only"?

A. The total revenue of the Minneapolis & St. Louis Railroad Company and not including the subsidiary line, Des Moines & Ft. Dodge.

Q. That is, in cases where the Minneapolis & St. Louis Railroad Company has leased lines it operates, or where it controls other lines through ownership of stock, you have not taken the gross earnings from those roads into account in making this division?

A. Yes, sir, because the cost of such property is not included in the cost of property here shown.

Q. By "Yes, sir" you mean you have not taken it into account for that reason?

A. Yes, sir.

Q. Now, turn to Ex. 7–A. I notice that on this Ex. 8 you take as the cost of the property the total of the items on Ex. 7–A.

A. Yes, sir.

Q. That is, you include in that, for the Minnesota Transfer Railway Company stock and bonds and the St. Paul Union Depot Company stock, $254,600.

A. Yes, sir.

Q. Also the items, on page 1 of Ex. 7–A–Scott, $133,185.50 discount on first preferred stock, $500,000; discount first consolidated mortgage bonds, $502,314.27; net expense of reorganization, $182,000; discount on $2,600,000 first and refunding mortgage bonds, sold to retire first and preferred stock; $17,785.22 Lake Park hotel property and $11,112.05 redemption of Kenwood property, do you not?

A. Yes, sir.

Q. If those items are not properly to be considered in the cost of the property for the purposes of this action, that would reduce this item "Cost of Property" to what?

A. Not admitting that such items are not a proper cost of the property, the reduction would bring the total of Ex. 7–A to $28,971,622.67.

Q. You were asked to report as to the ownership of the New Ulm & Southwestern Railway, whether the title had been acquired by the Minneapolis & St. Louis Railroad, or whether it simply owned the stock. Did you do that?

A. The property was deeded to the Minneapolis & St. Louis Railroad Company.

Q. You were asked to furnish a statement of the floating indebtedness of the Minneapolis & St. Louis, were you not? Have you that here?

A. On June 30, 1888, the records show net current liabilities of $123,868.25, that were assumed by the receiver, and a further indebtedness of interest that had accrued on bonds of $345,329.17. There are a few other items of a small nature

that really have no bearing, apparently, in the receivership proceedings.

Q. Has the Minneapolis & St. Louis Railroad paid dividends upon its common stock since the reorganization in 1894?

A. Yes, sir.

Q. Have you a statement here showing what dividends and when paid?

A. Yes, sir, I have a statement; I can give it to you.

Q. You may give us a statement of those dividends.

A. The total dividends paid on the common stock of $6,000,000 since the issue of said stock, or in November, 1894, is $1,080,000.

Mr. BUTLER: Can you give the years?

WITNESS: Yes, sir. In 1900, one and one-half per cent., or $90,000; in 1901, 4 per cent., or $240,000; in 1902, 5 per cent., or $300,000; in 1903, 5 per cent., or $300,000; in 1904, 2½ per cent., or $150,000. There has been no dividend paid since 1904 on the common stock.

Q. On the second preferred stock what dividends have been paid?

A. On the second preferred stock of $4,000,000 (now classed as first preferred) dividends have been paid, since the issue of same in 1894 of $2,360,000. In 1896, 3 per cent., or $120,000; in 1897, 3 per cent., $120,000; in 1898, 2 per cent. for the first half of the year and one and one-half for the second, or a total of $140,000; in 1899, 2 per cent. for the first half and 2½ per cent. for the second half of the year, or a total of $180,000; in 1900, 5 per cent., $200,000; 1901, 5 per cent., $200,000; 1902, 5 per cent., $200,000; 1903, 5 per cent., $200,000; 1904, 5 per cent., $200,000; 1905, 5 per cent., $200,000; 1906, 5 per cent., $200,000; 1907, 5 per cent., $200,000, and in 1908, 5 per cent., $200,000.

Q. What was the date of the payment of the last dividend in 1908?

A. The last dividend for 1908 would be declared on July 1, 1908, at the end of the fiscal year.

Mr. BUTLER: Has it actually been paid, and if so when?

WITNESS: Yes, sir; it is paid on the date that it is declared, July 1, 1908.

Adjourned until Monday, August 31st, at 10 A. M.

FEDERAL BUILDING, St. Paul, Minn., Monday, August 31, 1908, the hearing was resumed at 10 A. M.

LEMUEL G. SCOTT,

recalled on behalf of Complainant for further cross-examination, testified.

By Mr. DURMENT:

Q. Mr. Scott, you were asked to produce a statement showing the detailed cost of operation for passenger and freight for the years ending April 30, 1907, and April 30, 1908; have you produced them?

A. Yes, sir.

Q. I have here two sheets, one of which is marked Deft's Ex.-H—Scott," at the head of which purports to be the operating expenses, passenger and freight, for the year ending April 30, 1907, and a second sheet headed "Statement of Operating Expenses for Minnesota for ten months, ending April 30, 1908, Passenger and Freight," marked Ex. H-1—Scott; are these the detailed statements?

A. Yes, sir.

Q. On this sheet marked Ex. H—Scott, and H-1—Scott, under heading "Year ended April 30, 1907," are the figures for the entire year ending that day?

A. Yes, sir.

Q. And the other column, "Ex. H-1—Scott," headed "Two

months ended June 30, 1907," is for the months of May and June, 1907?

A. Yes, sir.

Q. While the succeeding ten months, up to April 30, 1908, are shown upon the other exhibit H-1—Scott?

A. Yes, sir.

Q. Why are the expenses for the year ending April 30, 1908, separated into periods of two months and ten months?

A. Because of the latest classification, the one now in effect being issued by the Interstate Commerce Commission and made effective July 1, 1907. The classifications are so different in their details with some of the expenses that we did not keep or attempt to make a distribution since July 1, 1907, under the old classification.

By Mr. BUTLER:

Q. The classification that you refer to is what? That is to say, is it a code of rules for the division of the cost of doing the business between freight and passenger business, or is it a code of rules for the assignment of cost to various elements of operating expenses taken as a whole?

A. The assignment of the expenses among the different itemized accounts as a whole.

Q. And it doesn't, then, relate to a division of the total cost between the freight cost and the passenger cost?

A. No, sir.

Q. And has the Interstate Commerce Commission any such rule or regulation?

A. No, sir, excepting for such expenses as are and can be determined or should be assigned as an expense of either nature, passenger or freight.

By Mr. DURMENT:

Q. Now, these exhibits H and H-1 are headed "Statement of Operating Expenses for Minnesota." They include, as I un-

derstand it, all the operating expenses for the state of Minnesota for the periods covered not only for state but interstate business in Minnesota.

A. Yes, sir.

Q. Have you the statement of the amount paid to get passenger business as called for at the time we were examining you with reference to Ex. 13?

A. Yes, sir; I have it, just in pencil note.

Q. The statement produced would not show any material diminution in the receipts in Ex. 13, referred to, and we will not go any further with it. Were you able to find the report of the reorganization committee?

A. No, and I have written to New York for that information.

Q. You were also asked to produce a statement showing the excess of cash of securities remaining in the hands of the reorganization committee, which was returned back to the reorganized company. Have you that?

A. Yes, sir.

Q. Will you state what it is?

A. In cash, $42,647.18; first preferred stock, $79,100; Minnesota Transfer Railway Company, stock, $7,000; Minnesota Transfer Railway Company bonds, $95,000. Making a total of $223,747.18.

Q. None of the bonds issued by the new company (the reorganized company) and delivered to the reorganization managers were returned?

A. Of the first consolidated mortgage there were returned $282,000 worth of bonds.

Q. That is all that was returned to the reorganization committee of any securities or stocks issued to them?

A. Yes, sir.

Q. You were to furnish us the details showing wherein the $4,195,057.21 difference between the construction and equip-

ment account at the time the receivership proceedings were instituted and the beginning of your statement Ex. 7-A arose. Have you that?

A. Yes, sir.

Q. Will you produce that statement?

A. Yes, sir.

Witness produces paper marked for identification "Defts' Ex.-I—Scott."

Q. You were asked to show how much, if any, of the preferred stock issued by the consolidated Minneapolis & St. Louis Railway Company to the original Minneapolis & St. Louis Railway Company was exchanged for common stock of that company under the provision in the agreement of consolidation; have you that?

A. Yes, sir. The records do not show that any stockholder took advantage of the privilege of making the exchange.

Mr. BUTLER: At five to one, as provided in the agreement?

WITNESS: Yes, sir.

Q. Was any of the preferred stock which was issued by the consolidated company to the original Minneapolis & St. Louis Railway Company, exchanged for common stock under any provision, or at all, so far as your records show?

A. I could not discover any exchanges ever made.

Q. You were asked also to find out, if you could, how much actual money had been received by the consolidating companies (that is, each consolidating company) for the stock of that consolidating company which was exchanged for stock in the Minneapolis & St. Louis Railway Company consolidated.

A. I could not disclose the information; the records are not complete enough to do so.

Q. As to the original Minneapolis & St. Louis Railway Company or any one of them?

A. As to any one of the four companies.

Q. You wouldn't have in your records, then, the same in-

formation as to these consolidating companies that would be contained in the reports of these companies to the State?

A. We have not, no. We have none of the records of three of the companies, and of the fourth the records are incomplete.

Q. That is, which three is it that you have none of the records of?

A. The Minneapolis & Duluth Railroad Company, the Minnesota & Iowa Southern Railroad Company, the Fort Dodge & Fort Ridgely Railroad Company.

Q. You were also to get us certain information with reference to $795,000 construction mortgage, which, as I believe, was issued before the last receivership proceeding.

A. That mortgage is dated January 2, 1882, and was issued according to the terms of the mortgage for fully equipping and completing its various lines of railway and purchasing and laying down steel rails upon a portion of its route and also making other improvements and betterments.

Q. It was used for those purposes, or can you tell?

A. I presume so. I couldn't get the detailed items of cost or what the amounts were expended for.

Q. You were to get the date of the income mortgage of $500,000 from which the company realized $390,725.

A. December 10, 1880; and was issued for the purpose of providing and paying for equipment.

Q. You were to look up a matter of a discrepancy of $529,900 in the exchange of some stock; did you do so?

A. Yes, sir.

Q. What did you find?

A. That the $529,900 was issued for construction purposes.

Q. Issued for construction purposes in what way?

A. Construction or completion of a line, I presume; I couldn't get the construction records to show the details.

Q. No, and you couldn't find that you ever received any cash for it, could you?

A. When the stock was issued the entries upon the books of the Company were made charging construction and crediting common stock.

Q. When was it issued?

A. It was issued on various dates.

Q. Well, give us the dates.

A. I can't do it for that particular item of $529,900.

Q. Well, you mean that particular stock was entered on your books and charged to construction account as it was issued?

A. No, sir.

Q. Just this $529,900?

A. There was $7,369,800 issued in exchange for stock of the consolidating companies. The balance of the total stock issue or $2,399,900 was issued, and cash to the amount of $599,887.50 realized; there was also a discount of $1,270,112.50, leaving the $529,900, which when issued was charged to construction cost and credited to capital stock.

Q. Now, what we want to know is just how much money you got for that last item of stock, and, if you didn't get money, just what construction it went for.

A. I can't give you the itemized construction cost.

Q. Do your books for that year show that there was construction of new road, or construction charges, which would, together with the money you paid for it in actual cash, have used this stock for construction purposes?

A. As I have stated, we haven't the details, and I couldn't say just what items of cost enter into that amount. We do know that the amount was charged to the general ledger account cost of construction.

Q. Yes, but do you know that the road got a single dollar of money or value in consideration of that stock?

A. Well, they certainly must have had, or they couldn't have made any entry of that kind.

Q. If so, we want you to produce your books to show what they got and when they got it and what it was. Now, that is the proposition we ask you to do in this case. You can account for the amount that was used in exchange for other stock; you can account for the amount you got in money; now, then, we want you to account for the amount that went for construction and what construction it was, so we can tell whether that road got any value for it or not.

A. I haven't the detail construction records, and I can't do it.

Q. Your books don't show, eh?

A. In detail, no, sir.

Q. Well, do your books show whether in fact they got anything of value for that, and if so, what was the nature of it or any of the items of it?

A. Simply the book entries. I didn't make them and, of course, I cannot testify as to—

Q. I understand that, but what do the books show? There must be something on the other side of the ledger to show.

A. Exactly; I said charged to cost of construction and credited to common stock.

Q. Now, would your construction account show that there was construction enough done that year to require this stock and the other money which you actually paid for it to be used for that purpose?

A. If I had the records, perhaps I could tell you, but I say I haven't the construction records.

Q. Who has those?

A. Well, I don't know; that was twenty-six years ago.

Q. As a matter of fact, isn't it true that the whole stock was issued as a bonus to the people who took the $455,000 in bonds in settlement of the original $700,000 bond issue for which they had paid $466,000?

A. I don't know; I don't think so.

Q. And your books don't show?

A. No, sir.

By Attorney General YOUNG:

Q. Mr. Scott, let me call your attention to Ex. 9—Scott. In this exhibit what purports to be the operating expenses of your line within the state is stated in gross sums. Calling your attention to the first item "Minnesota Operating Expenses for the year ended April 30, 1908," I want to ask you upon what basis you apportioned the operating expenses of your road so as to ascertain the proportion chargeable to the state of Minnesota.

A. Several bases were used, namely, total revenue, train mileage, switching-locomotive mileage, total-revenue-locomotive mileage, freight revenue, total-passenger-car mileage, total-freight-car mileage, gross revenue. Such items as were local to the state and not common to the entire line were charged direct to Minnesota. The bases that I have given cover the division of such expenses that are not or cannot be localized.

Q. In charging any portion of the expenses to the state, what particular branch of the state business did you have in mind? In other words, did you have any computation at all of operating expenses with reference to strictly intrastate business?

A. No, sir.

Q. The only computation you have is as to the total business done in the state, which includes the strictly intrastate and the proportion of the interstate business?

A. That is, you mean expenses that we used revenue as the basis for the division?

Q. Well, what I want to get at is this: Have you any computation of any kind as to operating expenses of your road for the strictly intrastate business within Minnesota?

A. No, sir.

Q. Have you for such business in any state?

A. No, sir.

Q. Have you ever attempted to make such a computation?

A. No, sir.

Q. There are a great many of the expenses of operation, Mr. Scott, that have to be arbitrarily apportioned to either the state business, as distinguished from the interstate, or as between freight and passenger; there is absolutely no scientific basis upon which all of the expenses can be apportioned, is there?

A. That would be particularly so as between passenger and freight. There is no established basis by any state or interstate commerce commission providing for a division between the two; but we have followed the practice, for seven or eight years, of making a division between passenger and freight for use of the executive officers. We localize to passenger all expenses incident to passengers, wherever it can be done, and the same way with freight, but when you come to the renewal of rails, ties, bridges, culverts, road-way and track, certain buildings, there is no scientific or established basis for the division between the two; therefore we used what, in our judgment, would be the best.

Q. Well, did you attempt to apply to those things that require renewal by reason of natural depreciation, the revenue-train mileage basis?

A. We used train-and car-mileage basis altogether for the division between passenger and freight of all items common to both. That is, we took the passenger-train mileage as a total and the passenger-car mileage as a total, added the two together, and arrived at a total. Then we took the freight-train miles and the freight-car miles, added them together and arrived at a total. Then these two totals were again added, getting at your total train and car mileage. Then we took whatever percentage the passenger-train and car-mileage

would be to the total and used that into the common items of expense in order to determine the passenger proportion; and the same method was followed for freight, making a division of the 100 per cent between the two divisions.

Q. Is that the method of division or the basis of computation used by roads generally?

A. Some of them won't go to that much trouble; they won't go that far, in other words. They will use but the one item, train mileage; but it seemed to us that that was not altogether fair, because an engine may haul a large number or a lesser number of cars, as comparing passenger car with freight car; for that reason we took the two and combined them, because it seemed to us that it would give a better and more accurate or a nearer division of cost.

Q. In order that we may understand why you so applied, will you kindly state, for the record, just what you mean by train mileage and what you mean by car mileage, and how they are distinguished, in making this computation? State briefly.

A. By freight train, would mean a train so classed; passenger, so classed.

Q. Passenger train?

A. Passenger train. We have the classification that the Interstate Commerce Commission have authorized.

Mr. BUTLER: With reference to defining what is a freight train and what is a passenger train, is that what you mean?

WITNESS: Yes, sir.

Q. Well, you don't mean to say that the Interstate Commerce Commission ever said how you should apportion these expenses?

A. Oh, no; as to the mileage.

Q. Now, you say the mileage traveled by a loaded freight train or a revenue freight train constitutes freight-train mileage, and the mileage traveled by a passenger train engaged

in the service would be passenger-train mileage?

A. Yes, sir.

Q. Then all of your revenue is, in fact, obtained either from freight-train mileage or passenger-train mileage, is it not?

A. Yes, sir.

Q. How does the addition of what you call the car-mileage computation add any to the clearness of the computation? Just explain how you come to add the car mileage and what the car mileage that you add means.

A. It means this—at least we so thought—an engine pulling a passenger train pulls, on an average, five or six cars, and an engine pulling a freight train will pull, on an average, a much larger number.

Q. Sixteen or seventeen, say?

A. I couldn't give you the average because I haven't it in mind, but it would be much larger, perhaps three times as large as the passenger train on the average, and it seemed no more than fair, in making the division between passenger and freight, that we should consider both the train and the car mileage. Now, that is our judgment.

Q. Well, just make it plain, so we will all understand what you mean by the car mileage as distinguished from the train mileage.

A. Train mileage would mean the mileage of the trains in their entirety; car mileage would mean the number of miles of passenger or freight cars hauled during the month.

Q. The individual mileage of each car?

A. Yes, sir, so many car-miles passenger, or so many car-miles freight.

Q. When you charge up the car mileage or add the car mileage to the train mileage, do you add simply the revenue-car mileage?

A. Yes, sir.

Q. You do not include the mileage of empty cars?

A. That is included.

Q. All mileage of the cars is included?

A. Yes, sir. I misunderstood your question. There is a distinction as between revenue car and non-revenue car and the work car service.

Q. Mr. Staples suggests the inquiry as to whether the caboose is included as a car.

A. Yes, sir.

Q. You have the detail of the total mileage on your system from which this computation was made as contained in Ex. 9, have you?

A. Yes, sir.

Q. It is a fact, is it not, that there are a great many of the items of the expense of operation which bear no relation whatever either to the train mileage or the car mileage and which do not vary with either?

A. I would not say yes to that because they do vary according to the mileage made or the use made of the property

Q. Well, a great many of them do, but are not there some that do not?

A. I would hardly think so.

Q. Salaries, I suppose, are part of the operating expenses of the road, aren't they, part of the general expenses; and doesn't everything that is a disbursement, (that is, a disbursement as you are operating the road,) enter into the operating expenses?

A. Oh, yes, they wouldn't fluctuate up and down, month to month, according to your train-car mileage, but if your train-car mileage were to drop off materially, some of these general expenses would have to be dropped off,—is what I meant in answer to the question before.

Q. Take the maintenance of way and structures, does all of that expense, in your opinion, bear any relation to the train mileage or to the volume of the traffic?

A. I should think so,—the use made thereof.

Q. Isn't there a great deal of the expense and cost of maintenance that arises from natural deterioration?

A. Certainly.

Q. Well, that would take place whether there was any mileage or not?

A. Oh, yes, but then—

Q. It is a very large item, isn't it? a very large proportion of the maintenance of way is something that arises from natural depreciation—maintenance of ties and structures and a large part of the maintenance of the track?

A. Not ties, because they are renewed right along and kept up from month to month. Rails would, of course.

Q. But why is it necessary to keep them up, is it because of the traffic, or is it because of natural depreciation? Wouldn't they decay just about as fast if there were no traffic?

A. Oh, I presume they would.

Q. So that that is not an item that is properly chargeable to train mileage, is it; it is one of the general expenses?

A. Yes, sir.

Q. That should be charged to the general mileage of the road?

A. Yes, sir.

Q. And so of structures and fences and those things that decay by natural depreciation? Of course, the renewal of rails, I suppose, arises almost entirely from traffic, that is, depreciation of rails, and that would be chargeable—

A. They would depreciate faster if not used than when used—rails would.

Q. So that whatever depreciation there is is chargeable to transportation, strictly?

Mr. BUTLER: No, he said they would depreciate faster without use than with use.

WITNESS: Yes, moderate use.

Q. Is that your opinion, or is that a matter of railroad experience? As a matter of railroad experience, rails are charged exclusively to transportation, aren't they, the renewal of the rails, and a great many of the other items to natural depreciation?

A. No, sir, they would not be charged to transportation, they are charged to maintaining way and structures. What we call "transportation" means a general expense covering the actual cost of transporting your freight and passengers.

Q. Renewal of rails is, of course, properly chargeable to maintenance of way, but what I wanted to get at was this, that in apportioning the cost of renewing rails, it should be apportioned to train mileage because, in railroad parlance, the total depreciation in rails arises from the use of the rails for traffic. As a matter of accounting, and as a matter of apportionment of cost, there is not considered to be any natural depreciation of rails excepting that which arises from use, is there?

A. No wear and tear.

Q. And they are not like the ties or like the structures, that decay by lapse of time, they are simply apportioned or charged up, or rather, the cost of the maintenance of that portion of the way can be charged properly upon a train-mileage basis and apportioned between freight and passengers in that way?

A. I have always understood, I don't know just when I learned it, that rails will depreciate faster when not in use than they will when in use.

Q. Is that a fact that is taken into account when there is an apportionment made of the cost of maintenance of way as between states or between traffic on a railroad?

A. No depreciation is considered, only the renewals.

Q. In apportioning your operating expenses to Minnesota,

was there any account taken or any apportionment made of any of the expenses upon the mileage basis of the road? That is, was any of the expense of operation or of the maintenance of way or structures, or any such item, apportioned on the basis of road mileage? I mean the general expenses which do not arise directly out of train mileage.

A. No, sir.

Q. It was all apportioned on the train-car-mileage basis?

A. As between passenger and freight and as among states on the several bases that I mentioned to commence with.

Q. What you mean is that a certain portion of the expenses were apportioned on the gross-revenue basis and a certain portion on the locomotive-mileage basis; you cannot use them all as a basis.

A. No, sir, but various items of expense naturally would call for a different basis of division among the states. One might be fair for one but it would not for the other.

Adjourned until Wednesday morning, September 9th.

FEDERAL BUILDING, St. Paul, Minn., Wednesday, Sept. 9, 1908, the hearing was resumed at 10 A. M.

LEMUEL G. SCOTT,

recalled for further cross-examination, testified.

By Attorney General YOUNG:

Q. When the examination ceased, Mr. Scott, on the day of the last adjournment, we were discussing the apportionment of operating expenses to Minnesota. Now, as preliminary to that inquiry, I want to find out what your relation is to the road that you have leased. You own 632.06 miles of road, all together?

A. Yes, sir.

Q. But your company is operating 1,028.49 miles, all together?

A. Yes, sir.

Q. A portion of the road that you own is situated in each of the states, Minnesota, Iowa and South Dakota, and you also operate some leased line in each of those states?

A. Yes, sir.

Q. The operating expenses (of which you have furnished us a statement) include as well the leased line as the line that you own?

A. Yes, sir.

Q. What is the relation of your road to the lines that it has leased with reference to maintenance of way and structures?

A. We maintain the property for them and charge them with the cost.

Q. You maintain it in the same condition as it was when you received it, do you?

A. Or improve it. Either.

Q. Where you make improvements, you charge it back to the Company as improvements?

A. Separately.

Q. Or do you include it in your operating expenses?

A. It is not included in the operating expenses. We charge them under a separate account.

Q. Now, in the main, what I want to get at is this, Mr. Scott: Do you treat the line or lines that you have leased, so far as operating expenses, in the same way you treat the line that you own?

A. Yes, sir.

Q. So that, in computing operating expenses for your entire system, the leased lines may be regarded as though you owned them with reference to the apportionment of the operating expenses between states?

A. Treat it in just the same manner. That is governed by

the classifications in effect and authorized by the Interstate Commerce Commission.

Q. I don't know that you grasp my meaning exactly. I don't care to go into the details, but what I want to know is this: Is there any difference between the expenditures that you are required to make on your leased lines for maintenance and the expenditures that you habitually make on the lines you own for maintenance?

A. Absolutely no difference.

Q. You also are handling a large amount of leased equipment, and you also own some equipment; that is true, isn't it?

A. Yes, sir.

Q. Now, how with reference to that equipment, what relation does your Company sustain toward it, so far as maintenance is concerned?

A. The equipment of the Des Moines & Fort Dodge (the line between Des Moines, Iowa, and Ruthven, Iowa) is maintained, kept in repair, by the Minneapolis & St. Louis, and that line is charged with the full cost of maintaining it. The equipment that is owned by the Minnesota, Dakota & Pacific (the line west of Watertown) is pooled with the equipment of the Minneapolis & St. Louis, and the repairs to the entire equipment are pooled and distributed on the basis of the use of said equipment. The revenues received from the use of that equipment by foreign lines are also pooled and divided between the two companies, based upon the use of the equipment over the two lines.

Q. Would you say that, so far as operating expenses of the road is concerned, we would be justified in treating that leased equipment just the same as though you owned it?

A. They thought so when they made the contract. They attempted to handle it on a fair basis as between the two companies.

Q. It would complicate the apportionment of expenses, as well as make the whole problem more difficult, if there is any-

thing about the lease of that equipment which would require the application to it of a different rule from that which applies to the maintenance of equipment owned by your Company?

A. It would.

Q. Now, what have you to say as to the status of this equipment under the contracts under which you operate it? can it safely be treated as though you owned it in making these apportionments and computations?

A. I think safely so, because it is the newer equipment of the two classes.

Q. You have the contracts under which you have acquired the right to use the equipment, have you?

A. Yes, sir; I think you or Mr. O'Brien have a copy of the contract.

Q. Did you acquire the equipment from the same companies from which you acquired the additional trackage?

A. The additional trackage and the equipment is owned by the same company, the Minnesota, Dakota & Pacific Railway.

Q. But the leased equipment is not confined in its operation to the leased lines; it is operated over your whole system, is it?

A. Over our whole system and the country in general.

Q. That is, where you exchange with other roads, it goes out just the same as the equipment that you own?

A. Yes, sir.

Mr. BUTLER: The latter, I suppose, is as to cars, over the country?

WITNESS: Oh, yes, confining that to cars only.

The MASTER: That is, to the rolling stock?

WITNESS: Yes, sir.

The MASTER: Locomotives?

WITNESS: The locomotives remain on the home property all the time; the cars move about throughout the country.

Q. Now, the operating expenses of a railroad include all disbursements outside of what are known as fixed charges, com-

prising taxes and interest on securities, do they not?

A. Yes, sir, with the exception of rentals that we pay for use of joint property over which we operate.

Q. And those rentals, as I understand it, are charged to the division in which the leased road is situated?

A. Yes, sir. I may add to that answer that the rentals that we pay are based upon the valuation of the property, into which is applied the per cent., bringing the total value of the property usually up to six per cent. The cost of maintaining and operating that property (operating the joint property, rather) would be in the operating expenses.

Q. So far as fixed charges are concerned, your chief fixed charges apply only to the portion of the line that you own; for example, all of your outstanding securities are a lien on the line that you own but not on the line that you have leased?

A. Yes, sir.

Q. And how about taxes, do you pay taxes on the leased lines as well as on the lines that you own?

A. Yes, sir.

Q. That is a part of your contract, is it?

A. Yes, sir, but such amounts are charged up to that particular property, of course.

Q. And all of these sheets, containing a statement of operating expenses, have been made up with reference to the entire system, just as though you owned the entire system?

A. Within Minnesota only.

Q. But in apportioning to Minnesota the part of your total operating expenses that you believed ought to be so apportioned, you have made the apportionment from the total operating expenses for the entire system?

A. Yes, sir.

Q. Let me get the matter clear with reference to the rentals of leased lines, Mr. Scott. Will you please state, again, how the rentals on leased lines are paid and to what general sub-

division of your cost accounting they are charged.

A. In speaking of rentals, the term, according to the classification, means the payment of interest upon the valuation of the property used. The amount, or rather the rate of interest, is usually fixed at six per cent., but our proportion is determined upon the number of companies using that joint property. In other words, if we used it in connection with one other road we would pay three per cent. interest upon the valuation established in the contract; if three roads used that joint property we would pay two per cent. upon that valuation; if four roads (we have no illustration of that kind), it would be one and one-half.

Q. Well, now, are there any portions of these leased lines that you have exclusive use of?

A. No, sir.

Q. They are all used in connection with other companies?

A. Yes, sir.

Q. Where is that expense entered up in your accounting system?

A. A direct charge against income account; not considered under operating expenses.

Q. It is charged to gross income,—gross earnings?

A. Charged to income account. Income account is an account into which is thrown all items affecting the income of the property, either expense or receipts.

Q. Well, that would be the income account of the entire system?

A. Yes, sir.

Q. Is there any difference in substance between the so-called rentals that you pay on different branches of your leased lines, or do you have substantially the same basis of payment in all of them?

A. The same.

Q. You have on your Ex. 3, under the head of "Leased

Lines," a line from Ruthven to Des Moines, 137.62 miles; are you operating that line exclusively or are you operating it jointly with some other road or roads?

A. We are operating that exclusively.

Q. Now, that is one of the leased lines that I had in mind, and we don't seem to have understood each other. You stated, a moment ago, that in all cases your leased lines were operated jointly with other companies.

A. I was speaking, in answer to your question, of joint property that is operated, property that is operated jointly with other lines; not lines that are operated under contract exclusively.

Q. I was talking about one subject, then, and you about another; we didn't understand each other. I have been talking about leased lines, and the lines which you have entered under your title "Leased" on Ex. 3.

Mr. BUTLER: May that not be distinguished by "leased lines" and "lines over which the Company has trackage rights?"

WITNESS: I have divided that here exactly that way on the statement.

Q. I have been talking about leased lines, my inquiry has been about leased lines.

A. Because of the reference to payment of rentals I understood your inquiry to apply to the lines over which the Company had trackage rights, and my answer was so intended.

The MASTER: Not the leased lines?

WITNESS: Not the leased lines, no, sir.

Q. Will you please state what you pay for the use of the leased lines?

A. $5 a year (a nominal consideration) in the way of rental.

Q. Is that because they are owned by some subsidiary company? How did you come to get them for any such price as that?

A. That is an amount, I presume, that was placed in the contract for special reasons, simply a nominal figure.

Q. Well, but is there no further compensation to the owners of the lines than $5 a year?

A. Nothing expect the mutual benefits than would accrue to each through the joint operation of the properties.

Q. Well, what becomes of the income earned on those leased lines? does your company get it, or—

A. The net income, do you mean?

Q. Yes.

A. They get it.

Q. Oh, that is a different proposition. Then they get everything over operating expenses, do they?

A. They get the net income for the year, after the entire cost of operation and payment of interest and taxes are made.

Q. Now, please state just what you mean by the net income on a leased line.

A. Net income would be the net income as a result of the operation of that property, taking into consideration all items of revenue or receipts and all items of expense, including interest and taxes.

Q. In other words, there is deducted from the gross receipts the total cost of the so-called operating expenses on that particular line?

A. Yes, sir.

Q. Including the cost of transportation, and what remains net is given to the Company from whom the line was leased?

A. After the payment of the fixed charges, interest and taxes, interest on the bonds.

Q. Let us see if we understand each other: Out of the gross revenue from the road you deduct what? Just make it plain on the record.

A. All operating expenses,—

Q. And that includes what, in a general way?

A. All the items that appear on Ex. H and Ex. H–1, taxes and interest on the bonds, and, under the present classification, it would include, also, the payment for rental of foreign equipment, which is now a charge to income instead of to operating expenses.

Q. And what remains is the net profit arising from the business done on that particular piece of road?

A. Yes, sir.

Q. It is possible, then, under your system of accounting, to ascertain what the exact profits are on any given piece of road?

A. Yes, sir.

Q. And under that same system it would be possible for you to give the exact cost and the exact profits, if any, arising from the operation of your road within a state?

A. Yes, sir.

Q. And you are able to do that in this case?

A. Yes, sir.

Q. Now, after the net profit on one of these leased lines is ascertained, Mr. Scott, and is paid over to the owner of the road, to what particular part of your expense account is that amount of money charged?

A. To the liability account, which we carry on our general ledger as a credit to that Company.

Q. Your liability account on your general ledger includes what?

A. Represents the net balance, either due to or from that Company, under the operating contract.

Q. But from what source does the money come to pay that sum to this owning road?

A. The revenues earned on that particular property.

Q. Oh, the revenues from that particular property are segregated and entered up as a credit to that company in your liability account, you say?

A. We credit them, of course, with their entire earnings in this account; we debit that account with the cost of operating the property. Now, there is a net balance either due to or from that company, and that is the liability account.

Q. But there is nothing goes into that except the earnings from this particular line, and nothing goes out of it except the cost of operating this particular line, so that what is left is a sum which properly belongs to that road?

A. Yes, sir.

Q. Well, now, then, when you come to apportion your operating expenses between your whole system and Minnesota, do you include the mileage there that has been disposed of by this special method?

A. For such items that are common, that cannot be localized, certainly.

Q. And only for those?

A. Only.

Q. In ascertaining what the net profits are upon any particular leased line, you must take into account the indirect items of cost on that line as well as the direct and local items?

A. Yes, sir.

Q. So that that is done by virtue of this other process you have referred to whereby you segregate the net earnings on that road from all of your other earnings?

A. Yes, sir.

Q. Now, what I want to get at is, having done that with that particular road, when you come to apportion the operating expenses between your whole system and the state of Minnesota, what do you do with those particular portions as to which this special method of accounting had been employed?

A. No portion of that belongs to Minnesota; it never gets into it; it is assigned to that road the same as we assign to our line within Minnesota its proportion.

Q. In your column here in Ex. H–Scott which is marked

"Operating expenses for the entire system" is there included the operating expenses upon these leased lines?

A. Yes, sir.

Q. The accounts of these special roads (these leased roads) are taken into account in the final apportionment between the whole system and the state?

A. The expenses for the entire line, as indicated here in Ex. H-1-Scott, represent, of course, the entire expenses for the whole property; but we localize, as I have stated before, the expenses for these leased properties, charging them direct with everything that can be charged direct. Such items of expense that are common to the entire line are apportioned to these properties, and to the rest of the line upon the bases as we have furnished you.

Q. And the proper share belonging to the leased lines is apportioned upon the same basis as the proportion that belongs to the state is apportioned?

A. Yes, sir.

Q. Now, Mr. Scott, calling your attention again to net profits arising from the operation of the leased lines, and which you say is paid to the owners of the lines, to what is that payment ultimately charged? is it charged to general operating expenses of the system?

A. No, to the individual account, the liability account. Just as if it were a personal account with you and we paid all your debts and took in all your money and after the figures were finally all entered we found we owed you a hundred dollars, we would pay that $100 to you and charge your account with it.

Q. Yes, but what else would you charge? You would also charge your expense account, wouldn't you?

A. No, sir; it closes the transaction.

Q. Where would you get the hundred?

A. We have them credited with that $100 on the books, in

the liability account; we owe them that money just the same as we would owe John Smith or Jones or anybody.

Q. You take in a certain amount of money on the line of road, you pay out a certain portion of it for operating expenses on that line of road, all the balance that you get in from that road you pay to the owner of the road?

A. Yes, sir.

Mr. BUTLER: He also has spoken of interest and taxes.

Attorney General YOUNG: I understand, but I am just generalizing.

Q. Now, when you make up your statement of total operating expenses, you include in it all that you have paid for the operating expenses of that line, of the leased line?

A. Yes, sir.

Q. Don't you also include in that total the amount that you pay to the owner of the road as the net profits?

A. No, sir.

Q. Doesn't that go into operating expenses?

A. No, sir.

Q. So far as the whole system is concerned?

A. No, sir; that money is turned over, and of course they use it for dividends or for whatever purpose they please.

Q. Your position is that the net earnings, upon these particular divisions of the road which are held under lease, do not affect the other portions of the road at all?

A. Absolutely no, they do not.

Q. The way your accounts are kept?

A. Yes, sir.

Q. And they are not taken into account at all in making up your statement of operating expenses for the whole system or for the states?

A. For the states, no, sir.

Q. You state that you also pay on those lines, as a part of operating expenses, the interest on the bonds and the taxes?

A. Yes, sir.

Q. Well, of course, those items, being a part of what you class as operating expenses, are included in the total operating expenses for the system?

A. No, sir; those items are charged direct to income account on their own books. We of course charge them with the interest and with the taxes in this account of which I speak; then that amount appears on their books as an interest payment, or a payment on account of taxes, but no portion of that interest or those taxes would appear in the Minnesota results.

Q. Well, those items, then, as a part of the operating expenses of these leased lines, do not enter into the grand totals of your operating expenses for the system?

A. You mean as indicated on Exs. H and H-1?

Q. Yes.

A. Total operating expenses?

Q. Yes.

A. No, sir, they do not.

Q. Is that answer true as to all of the leased lines?

A. Not so far as maintenance of way and structures, maintenance of equipment and general expenses, transportation and traffic,—all items of that nature are in the total, under the heading "Entire Line" on Exs. H and H-1.

Q. Now, your methods of operating and keeping accounts with the various leased lines are uniform, are they?

A. Yes, sir.

Q. You treat them all alike?

A. Yes, sir.

Q. So that when you describe the method of accounting with one of these leased lines, you have described the method employed with all of them?

A. Yes, sir.

Q. And your practice with reference to the lines over which you simply have trackage rights is as you have stated,—the cost

is apportioned between you and the other companies operating the lines in controversy?

A. Yes, sir.

By Mr. BUTLER:

Q. And is that basis of apportionment the number of companies using, or the quantum of use by each company?

A. It is according to the use made by the tenant lines.

Q. Depending on the number of wheels passing over the joint track?

A. That is the way our contracts are; the expense is divided under our contracts.

Q. For instance, if there be two companies and one uses twice as much on the wheelage basis as the other, then one would pay one-third and the other two-thirds?

A. Yes, sir.

Q. Of the amount to be paid?

A. Yes, sir.

A. Yes, sir.

Q. The division I referred to was intended to refer to the operating expenses and not the rentals.

A. Not the rentals, no, sir.

Q. The rentals is divided on the basis of the number of companies using?

By Mr. Attorney General YOUNG:

Q. But the operating expenses in proportion to the quantum of use?

A. Yes, sir.

The MASTER: That is, the three companies each would pay a third?

WITNESS: So far as the result is concerned.

The MASTER: I mean so far as rental is concerned; but when it comes to operating expenses it is wheelage basis?

WITNESS: Yes, sir, according to use.

Q. In the railroad business you habitually employ a cost

accounting system similar to that employed in other mercantile industries?

A. I am not familiar with the systems employed in commercial lines, but I should think so.

Q. I simply mean that you have a cost accounting system whereby you can tell with practical accuracy just what the cost of operation is and on any particular line or branch of your road.

A. Yes, sir, or line of service.

Q. In the matter of investigating rates or the matter of regulating rates, either by the Company or by public authority, one of the fundamental facts that must be taken into account is the cost of the work to the carrier, the cost of doing the business to the carrier?

A. That would be my opinion.

Q. And without getting at that basis of cost to the carrier, it would be impossible to have anything like scientific regulation of rates, either by the Company itself or by the public?

A. Bearing in mind, of course, that the costs are not anywhere near the same with all companies; the cost depends a great deal upon the conditions.

Q. Well, I am speaking about rates with reference to any particular carrier. In fixing the rates for that carrier, you must get at the cost of doing the business, the cost of the service?

A. Well, I should think you would have to bear in mind, also, the cost to other companies in the same territory.

Q. Suppose there were no other companies? Just confine yourself to the question as asked.

A. I was endeavoring to do that.

Q. In apportioning the operating expenses of a railroad between the business within the state and the business without the state, as well as between freight and passengers, there are many items that are local or direct in their character which

may be said to aliot themselves in making the charges?

A. Yes, sir.

Q. And there are many others which are indirect, and they must be apportioned on some equitable basis more or less arbitrary?

A. Yes, sir.

Q. In making this apportionment of operating expenses to Minnesota which is shown by your Exhibits H and H-1, what traffic did you take into consideration, how did you come to apportion certain of the expenses to Minnesota or what basis did you use?

A. We localized all expenses to Minnesota where we could possibly do so. There are items of expense that are common to the entire line or the three states; such expenses we have apportioned among the three states upon quite a number of bases.

Q. What I want to get at is what was it you considered Minnesota business in making this apportionment.

A. All expenditures made within the state and a proportion of certain expenditures that are considered common to the entire line.

Q. Made within the state on what line of business?

A. Well, in renewing rails and in renewing ties,—

Q. You don't get my meaning. What kind of traffic was it that you had in mind as being Minnesota traffic?

A. The expenses?

Q. Yes. Was it traffic beginning and ending in the state, or traffic beginning in the state and ending somewhere else, or going clear through?

Mr. BUTLER: Or all on the rails within the state.

Q. You apportioned a certain part of your operating expenses to Minnesota. Now, I want to know what was your first basis of apportionment. That is,—

A. Well, a majority of the expenses are charged direct to the state without considering the traffic at all, because the ex-

penditure was made within the state. Some of the expenditures were divided among the states using as a basis revenue. For instance, administration,—in dividing that expense among the three states, we did so upon a basis of the gross revenue earned within each state, upon the percentage basis.

Q. In apportioning your operating expenses to Minnesota, or in apportioning your operating expenses for the purposes of this case, did you take into account, as any separate branch of your business, the business beginning and ending in the state of Minnesota?

A. No, sir.

Q. Well, that, you understand, do you not, is the subject of this controversy? The State of Minnesota has undertaken to regulate rates upon business beginning and ending within the state; you are aware of that, aren't you?

A. Yes, sir.

Q. You know that that is the only business over which the State has jurisdiction?

A. Yes, sir.

Mr. BUTLER: We don't want it implied that it has over that.

Q. Your Company claims that the rates, specifying them, which the State has undertaken to make, and which apply to that business only, are unreasonable, does it not?

A. I presume so.

Q. Well, now, then, what I want to get at is, what is it that you have brought to us here by way of an exhibit to show us what was the cost of the business of that character which your Company does in Minnesota?

A. I haven't brought any such exhibit.

Q. You haven't brought any such exhibit,—why haven't you?

A. Because we do not, nor never have, made any attempt to separate the expenses as between the cost of intra and interstate, and, in my opinion, an actual basis cannot be determined.

Q. Why, an actual division cannot be determined as between states; it has got to be arbitrarily apportioned on some sound and equitable basis, hasn't it, in dividing the expenses between states?

A. It has.

Q. Now, by applying that same system of apportionment a little farther, you can get at what the cost is in the state of carrying on the intrastate business, can you not?

A. Oh, I presume it could be worked out.

Q. There is no difficulty at all in finding what the income is from that basis, is there?

A. Yes, there is; it involves considerable labor to separate the intra and interstate revenues.

Q. Well, it involves some labor, but what I mean is that there is no insuperable difficulty, you can get at the income within the state?

A. We have the income within the state, yes, but I mean a further separation between intra and inter.

Q. If you can get at what the income is from that business and this business by applying the same method of apportionment to it that you have applied to the division of your expenses between states to find out what the preliminary cost is of that branch of the business in the state, it can be ascertained whether that branch of your business is bearing its proper share of the total cost of the business of your line, can't it?

A. I presume so, if a basis was established as between the cost of performing intrastate service and interstate service.

Q. Well, have you undertaken to do that?

A. No, sir.

Q. There is an organization of railroad accountants in existence, isn't there?

A. Yes, sir.

Q. And the organization was created for the purpose of making these various computations and allotments of expenses

between the various subdivisions of your business, was it not?

A. Never been any—

Q. Never accomplished anything?

A. Well, they have never attempted to accomplish anything along that line.

Q. Now, if it was ascertained that that particular branch of your business was bearing its fair share of the total expenses, and the net profits of that business was contributing its fair share toward a reasonable income on the cost of the investment, we would be in a position to show whether the rates on that branch of business were fair or not, would we not?

A. I don't know; it is my opinion the changing of any rates, or anything of that kind, affects the entire revenue, both state and interstate. I am not able to answer that question.

Q. By the various railroad companies refusing to give these items of the cost of doing the business on intrastate business, they have been able to make it practically impossible for states to regulate rates, haven't they?

Mr. BUTLER: We object to that as argumentative and assuming something that is not in proof. I don't recall any refusal. I don't recall that, in the generation of time that the Commission of Minnesota has been in existence, it has ever devised or established any basis for getting at the cost of carrying Class 1 as against the other sixteen classes which are now established, or as between intrastate business and interstate business. The Interstate Commerce Commission has existed since 1887, and I don't understand that it has ever established any such basis, or that either the state authority or the national authority has ever applied to the railroads for such a division, so the assumption that there has been a refusal certainly does not appear to be justified upon the record in this case.

WITNESS: They have never refused to do so, but because of the expenses being almost inseparable they have never even considered it, or, in fact, thought of it, so far as I am concerned.

Q. Well, now, are the expenses which relate exclusively to intrastate business any more inseparable from the other expenses of your line than are the expenses on what you call the total buiness of the state?

A. I should think they would be.

Q. Why?

A. Because of the way the business is handled. I am not an operating man and couldn't answer your question satisfactorily,—

Q. Well, when you have ascertained the amount which you say is properly chargeable to the state, it is not a difficult matter to go a step farther, is it, having before you all of the information, and give us what is the proper proportion of the cost to the state of the intrastate business?

A. It would be a matter of considerable detail, that we have never done.

Q. But it could be carried out, could it not, with just as great accuracy as can the process by which you found the amount which you say is properly chargeable to the state?

A. Oh, that can be done by going all through and picking it out.

Q. Well, now, who told you upon what basis to prepare your tables in this case?

A. Legal advice.

Q. Well, did your counsel tell you to prepare anything with reference to the cost of maintaining or carrying on the intrastate business?

A. No, sir.

Q. Did they tell you not to prepare it?

A. No, sir.

Q. Didn't you yourself know that that was really the question in controversy,—the regulation of intrastate rates in Minnesota?

A. I will have to be free to admit that I did not.

Q. In preparing your tables, then, in this case, you did not know what it was that was in controversy?

A. I knew what was in controversy regarding the rates.

Q. You knew that it was the Minnesota rates?

A. Certainly.

Q. You have read the order of the Commission and the laws of the state with relation to those rates, have you not?

A. I have read the order but I don't believe I have read the laws.

Q. Well, you know that the terms of the order made the rates there prescribed applicable only to traffic beginning and ending in the state?

A. Yes, sir.

Q. You then knew that that was all that was in controversy in this case,—the reasonableness of those rates?

A. I knew that.

Q. Well, didn't it occur to you, as an accountant, to prepare statistics that would have application to that question?

A. No, sir, it did not.

Q. Did anybody tell you that the State was claiming the right to regulate any other rates than those named in the order and in the laws?

A. No.

Q. You have been told here, haven't you, that we are not trying to regulate any other rates except those on traffic beginning and ending in the state?

A. I have not been told it but I assume it.

Recess until 2 p. m.

AFTERNOON SESSION.

Q. In your apportionment of operating expenses to Minnesota, Mr. Scott, you stated, I believe, that you charged to the business of the state of Minnesota such expenditures as occurred entirely within the state or as were localized within the

state. Does that mean terminal expenses?

A. Yes, sir, if a terminal were located within the state.

Q. What terminals have you within Minnesota?

A. St. Paul is where the line starts from here; and Albert Lea and Morton. And I presume Minneapolis, also, should be considered as a terminal.

Q. How does Morton come to be a terminal? Is that the end of your—

A. It is not a terminal, no; it is the end of a division.

Q. Do you maintain a separate station in St. Paul?

A. No, sir.

Q. You do in Minneapolis?

A. Yes, sir.

Q. In St. Paul your trains come into the union station (passenger trains) and how about your freight?

A. We use the Northern Pacific terminals.

Q. In Minneapolis you have your own stations for both lines of business, do you not?

A. Yes, sir.

Q. The expense of maintaining your Minneapolis terminal is considerably greater, is it not, than your proportion of the expense in St. Paul?

A. In some items of expense it would be; in others it would not.

Q. Well, you are maintaining your own station, and it is devoted exclusively to your business, is it not?

A. Yes, sir.

Q. Now, you say that the entire cost of maintaining the stations, both in St. Paul and in Minneapolis, is charged to Minnesota business exclusively?

A. Yes, sir.

Q. It is also true of Albert Lea, where your interstate business originates (as your Chicago business, for instance), and of Morton. Now, isn't it true that those stations are used more

for interstate business than they are for business wholly within the state of Minnesota?

A. I don't know as to that. They are used for both, of course, just as any station along the line would be used, but the percentage proportion I have never had occasion to look into.

Q. But in charging operating expenses to the state, no allowance is made whatever for the fact that any part of the business done at those stations or terminals is interstate?

A. No, sir; neither is it true of the terminals in the other states.

Q. The terminals in this state are the principal ones of the system, are they not?

A. Yes, sir.

Q. And Minneapolis is the principal one of all, is it not?

A. Yes, the largest.

Q. Do you think it is a fair proportion in the apportionment of operating expenses to charge to Minnesota business the entire cost of maintaining your terminals in Minneapolis?

A. We have always thought so.

Q. Can you give any reason why that would be true?

A. Because of there being large terminals elsewhere, not only on our line, but the same principle, I am sure, is used on other roads.

Q. On some other roads, not all?

A. I wouldn't be able to say.

Q. Now, is there any reason that occurs to you that is cogent why, in apportioning operating expenses, the terminal expenses should not be apportioned in much the same way as other operating expenses, on some fair and equitable basis?

A. We have always figured that it should be an expense local to the state, as I say, because of the fact that we have other terminals located in other states, and it is a question whether Minneapolis would contribute more (perhaps it does)

to the revenues of the entire line than perhaps any other individual city; but a great deal of our business originates, of course, at points like Chicago and St. Louis, where the expenses are a great deal heavier than they are in Minneapolis.

Q. But you don't maintain terminals in those cities?

A. No, but we get business from those terminals, that are maintained by other roads.

Q. Now, in the matter of interstate business from Chicago, received by your road at Albert Lea, it is true, is it not, that there is an arbitrary terminal charge made by your road in addition to its proportion of the per-mile charge?

A. No, sir, I don't think we do at Albert Lea.

Q. I think Mr. Tittemore testified that, for example, on merchandise shipped from Chicago to Minneapolis—

Mr. BUTLER: Didn't that apply only to cases that reached Minneapolis?

WITNESS: Yes.

Attorney General YOUNG: No, it applies to every case that he was asked about.

Q. Take, for instance, from Chicago to Winthrop, or from Chicago to any other station, he testified, as I remember it, that there was allowed out of the total charge a certain arbitrary amount as a terminal charge in favor of your road, and the balance was prorated.

A. That is not my understanding.

Q. Do you know whether that is true or not?

A. I don't think it is.

Q. Well, do you know whether it is or not?

A. Well, it is not.

Q. It is not true.

A. That the only terminal charge is in Minneapolis, as I recollect it.

Q. Mr. Tittemore's testimony, of course, will show for itself, but there is certainly a terminal charge made for mer-

chandise going to Minneapolis?

A. Yes, sir.

Q. For all interstate business?

A. Yes, sir, there is.

Q. It is just as much expense to the road to handle a certain tonnage of interstate freight at Minneapolis, or to accommodate a certain number of passengers engaged in interstate travel, as it would be to handle a like amount of freight or accommodate an equal number of passengers in domestic business?

A. Of the same class, yes.

Q. In the case of your road it happens that the big terminal —the Minneapolis terminal—is in Minnesota?

A. Yes.

Q. Now, suppose interstate rates were under investigation, do you think you would apportion your terminal charges in the same way,—charge up to Minnesota business all the cost of maintaining Minnesota terminals?

A. Yes, sir.

Q. You would?

A. Yes, sir.

Q. Have you ever testified in an interstate case?

A. No, sir; but the records would speak for themselves. Clear, away back for years they so indicate it. I couldn't testify any other wise.

Q. Well, you prepared these statistics for your own benefit; you have never prepared these by direction of any state or interstate commerce commission with reference to rates; whatever division you have been in the habit of making of this matter, as to your Company, was done for your own information and for the information of the officers, the stockholders?

A. It was made, primarily, for the information of the officers, and handled as an accounting division proposition, and not as a state; the state feature subsequently entered into the

question, but when we were handling the expenses, as I say, for what we call the Albert Lea division, Minneapolis being located on the Albert Lea division, the entire expense was localized to the Albert Lea division.

Q. You have never prepared statistics in a rate case before, have you?

A. No, sir.

Q. But it happens in this case, does it not, that if there is any unfairness about such an apportionment of the operating expenses, it is favorable to your Company in the controversy with Minnesota to charge all that expense to Minnesota?

A. We don't consider it unfair, but we do make the entire charge to the state.

Q. That doesn't answer the question. In fact, it is more favorable to your Company to charge it in that way in this controversy than it would be to charge it in any other way?

A. I don't so understand it.

Q. It would be to the advantage of your Company to show that the operating expenses in Minnesota were large, would it not, in this controversy? You don't desire to have your rates reduced?

A. No, but the revenue is proportionately larger because of the terminal being located within the state.

Q. You don't allow Minnesota credit for all the revenue that comes to the terminal, do you? What good does it do Minnesota to have a lot of interstate business come there?

A. She does get credit for almost all of it, but whether she does for all of it or not, I am not prepared to say just now.

Q. How could it possibly get any credit for the interstate business?

A. Because our junction-points are within Minnesota on our heavy business from Chicago and from St. Louis, therefore, the entire revenue accruing to the Minneapolis & St. Louis is credited to Minnesota.

Q. Do you mean that? Do you want to stick to that?

A. Our proportion of the entire revenue on such shipments is credited entirely to the state of Minnesota, yes, sir.

Q. Well, how about interstate business? Is that true as to business that goes outside the state?

A. Certainly.

Q. What is that?

A. Yes, it is true on all business; our proportion. We only get the proportion accruing to us because of the haul from Albert Lea to Minneapolis.

Q. But suppose that business goes beyond Minneapolis and goes beyond your line or goes outside the state?

A. There is no terminal expense then, as I understand it.

Q. Suppose it goes beyond the state on your line.

A. There wouldn't be any terminal expense; there wouldn't be any arbitrary added, in other words, nor really any extra terminal expense.

Q. Why wouldn't there?

A. The shipment would go on through.

Q. It would have to be handled in Minneapolis, wouldn't it?

A. No, sir, it is simply thrown into the other train like it would be at any junction-point.

Q. Now, the revenue from your terminals in the state is apportioned on the basis of the revenue-train mileage, is it not?

A. The basis of the mileage according to the haul.

Q. How do you apportion your earnings to the state so that the state gets any advantage from the fact that the terminal is here?

A. On shipments coming from any particular point?

Q. Yes.

A. Well, from Chicago they would reach our line at Albert Lea.

Q. Yes.

A. And we are allowed a certain proportion of the through

freight revenue. Our entire allowance would be credited in that case to the State of Minnesota, which would include—

Q. For all Minnesota business?

A. Which would include the arbitrary.

Q. That is, the terminal charge, you mean, the arbitrary?

A. Yes, sir.

Q. You mean it would be credited to Minnesota interstate; it would not be credited to Minnesota intrastate business, would it?

A. No, sir, it should not.

Q. We are trying to get at (and we have got to get it, whether we get it from you or somebody else, before this case is through) the intrastate division of your earnings and expenses, and that is what we are aiming at. Now, it doesn't do Minnesota any good, in trying the question of its intrastate rates, to find out how much you have apportioned to it as Minnesota interstate rates or interstate profits. What I want to get at is, how does Minnesota, upon the intrastate business, derive any credit or benefit from the fact that your terminals are located here?

A. Excepting through the originating of business would be about all.

Q. Does business originate because your terminals are here? Isn't it business that originates in the state and is seeking transfer from one place in the state to another; that business would be here and would have to be transferred whether your terminals were here or not, wouldn't it?

A. I thought you were speaking of the intrastate business.

Q. I am speaking of the intrastate business, yes, business beginning in this state and ending in this state.

A. Passing through Minneapolis, do you mean?

Q. Well, no matter where it originates,—in this state, going to any other part of the state,—how does it happen to derive any benefit from the existence of your terminals here so

as to offset the disadvantage of being charged with the total expense of maintaining your terminals?

A. I fail to—

Mr. BUTLER: Mr. Young, he hasn't said that the Minnesota intrastate business was charged with the total expense of the terminals.

Attorney General YOUNG: That is the only charge we have got here in his tables.

Mr. BUTLER: That includes all business in Minnesota, including interstate and local. I think you are under a misapprehension if you so understood him.

Q. In referring to the use of your Minnesota terminals, you state that business of an interstate character received by you at Albert Lea and transferred by you at Minneapolis is, so far as your road is concerned, hauled wholly within the state, and that Minnesota interstate business gets credit for the whole amount of it. How about business originating in Iowa, coming into the state over your line, and other interstate business, or business originating here and going out over your line; how is that apportioned?

A. On the mileage basis.

Q. On the train-mileage basis, the train-revenue mile?

A. According to the mileage of its shipment.

Q. On the miles-hauled basis?

A. Miles-hauled basis.

Q. Should not the terminal expense on that class of business be apportioned, also, on the same basis?

A. I am not sure whether there is a terminal charge added to shipments of that nature. I am sure there are not on shipments originating on our own line.

Q. There is a terminal cost to your own Company, you have your terminal expense of handling the business. Now, what I want to get at is, do you apportion that terminal cost to that business on the same basis as its revenue or any other

basis, or do you just simply make up a blanket charge of the whole business to this state?

A. We charge the entire expense at Minneapolis to the state of Minnesota.

Q. You don't even undertake to apportion it between Minnesota interstate and Minnesota intrastate?

A. We have never made any attempt to separate any of the expenses as between intrastate and interstate business.

Q. Your total terminal expenses at Albert Lea are also localized in your division and charged to Minnesota?

A. Yes, sir.

Q. Because they arise in this state. Now, then, suppose a shipment of wheat originating say, at Winthrop, on your line, and intended for Chicago, is shipped on the milling-in-transit privilege to Minneapolis; after that grain is ground into flour, theoretically it moves forward on the same billing as before, at least on the same charge that was made for it originally. Now, that car of flour would be carried from Minneapolis, taken up into your train at Minneapolis and carried to Albert Lea and there delivered to the Illinois Central, without any additional charge except what you obtain for shipping it from Winthrop to Minneapolis, would it not?

A. It would depend upon the rate.

Q. That is substantially correct, isn't it?

A. It would depend upon the rate, and just what the rate is I am not familiar with it, but the expense of handling that shipment from Winthrop to Chicago, that is, to the terminal that we would turn it over at, would be charged according to the movement of the shipment, the expense incident to the movement of it in Minneapolis and Minneapolis on to where it is delivered to the junction-line; the expense would follow the shipment.

Q. Well, so far as your road is concerned, the terminal expense of receiving that shipment at Minneapolis and delivering

it to the mill there, and taking it up again when flour is loaded into a car, making it a part of your train and sending it on to Albert Lea and there delivering it to the Illinois Central or your connecting road, is all a part of the terminal expenses of your road in this state?

A. Yes, sir, the entire expenses of the terminal at Minneapolis would be assigned to the state.

Q. All of that expense would be assigned to the state in your division of operating expenses?

A. Yes, sir.

Q. Notwithstanding the fact that that shipment was, from the start, an interstate shipment from Winthrop to Chicago?

A. Notwithstanding the fact that it is an interstate shipment, the entire haul would be within the state of Minnesota, so far as our line is concerned, and, as I said before, the expense of handling the shipment from Winthrop to Albert Lea would be all Minnesota because it is entirely within Minnesota, and so the terminal expenses at Minneapolis are assigned entirely to Minnesota.

Q. Well, now, then, by reason of that shipment (that I have used for illustration) having been made originally as an interstate shipment, you carry it for a very much less rate than if it was shipped merely from Winthrop to Minneapolis, in the first place?

A. And rebilled locally?

Q. Yes. In fact you get no more, do you, for carrying it through Minneapolis to Albert Lea than the rate from Winthrop to Minneapolis? The second haul is without profit to your company?

A. It depends upon what the rate is, and I am not familiar with those rates. I don't know just what the rate from Winthrop to Chicago would be and what the local rate from Winthrop to Minneapolis would be.

Q. That already appears in the case as one of the facts.

Now, in view of that fact, isn't a very large part of the terminal expense of handling that shipment a charge which is entirely independent of the fact that this second section of the haul is within the state; it is a cost that arises out of an interstate undertaking, and therefore ought to be apportioned to interstate business, had it not?

A. A cost arising incident to the handling of that particular shipment, but we have never made any separation of expenses as between interstate and intrastate.

Q. In the case of a shipment from Minneapolis to Watertown, South Dakota, you have the terminal charges at Minneapolis and also the terminal charges at Morton, the end of the division in this state; the shipment is destined to South Dakota; is any part of these terminal expenses, of either Minneapolis or Morton, apportioned to that interstate haul?

A. The expense at both Minneapolis and Morton is assigned to Minnesota. There would not be any additional terminal expense at Morton on the shipment that you mention.

Q. Going through?

A. Going through.

Q. There would be no substantial expense going through?

A. No, sir.

Q. But whatever terminal expenses there would be would be charged to Minnesota business?

A. Charged to the state of Minnesota.

Mr. BUTLER: That is, whatever would be in Minnesota, you mean; the Watertown—

WITNESS: Oh, no, he is speaking of the terminal.

Q. And that would be true of all interstate business going out of the state on that line, or coming into the state over your Iowa lines, or coming into the state from South Dakota?

A. Wherever it is handled at Minneapolis.

Q. Whatever the character of the business that comes in there, makes no difference, the expense of the station is assigned to Minnesota, anyway?

A. The expenses of the stations are assigned to Minnesota, and the expenses incident at Watertown would be charged to South Dakota.

Q. Now, calling your attention to Ex. H,—Ex. H relates to your apportionment of operating expenses for the state of Minnesota for the year ended April 30, 1907. There is about one-third of your line, as to mileage, in the state; that is, counting the entire operating mileage of your system, substantially one-third of it in the state?

A. Not on April 30, 1907. That was not true.

Q. Have you acquired any road since? You are operating 1028 miles?

A. On April 30, 1908, we were, but on April 30, 1907, we were operating 822 miles.

Q. What mileage was it you acquired since April 30, 1907?

A. The two items Watertown to Leola and Condee to Le Beau.

Q. How many miles?

A. 229.70.

Q. What time did you say you acquired that line? In what portion of this period did you own that line?

A. It was taken up on different dates, certain portions as it was finished.

Q. This was a line constructed, by your Company, or constructed for you?

A. It was constructed by a separate company, but you might say fathered by the M. & St. L.

Q. During the year 1907 a little less than half of your road was in Minnesota, on a mileage basis?

A. 49 per cent.

Q. During the year 1907 there was 49 per cent. of the total mileage operated located in Minnesota?

A. Yes, sir.

Q. During the year ended April 30, 1907, what proportion

of the total mileage operated by your Company was in the state of Iowa?

A. 46 per cent.

Q. And in South Dakota five per cent?

A. Yes, sir.

Q. Between that time and April 30, 1908, you acquired, or there was added to your system, 229.70 miles in South Dakota?

A. Yes, sir.

Q. So that on April 30, 1908, there was but 37 per cent. of your road in Minnesota?

A. Practically 38.

Q. Thirty-five per cent. in Iowa?

A. Thirty-six; and 26 in South Dakota.

Q. Now, then, calling your attention to Ex. H, the first sheet is devoted to the subject of conducting transportation and is divided into station service, train service, engine service and contingencies. Under the head of station service I note that the total expense for your entire line was $60,356.96.

A. For what expense?

Q. For switchmen, flagmen and watchmen.

A. Yes, sir.

Q. And of this amount you charged to Minnesota $51,299.45.

A. Yes, sir.

Q. Will you kindly state how you made that apportionment?

A. There was assigned to Minnesota the expense of switchmen, flagmen and watchmen according to the location of the men; that is an item of expense that would accrue to the state in which the service was performed.

Q. But wherever located, those men were engaged as well in the general interstate business of the road as in the business carried on in the state where they were located?

A. Handling all business that would come into the station where they are located.

Q. Isn't that an expense which ought to be apportioned according to revenue-train mileage or on some basis that has some relation to the traffic? They are strictly traffic expenses, aren't they?

A. Handling traffic entirely, yes.

Q. Well, shouldn't the cost be apportioned on some basis that has some relation to the traffic?

A. We have never done so.

Q. Well, would that not be the more equitable way to apportion it, don't you think?

A. I don't see how you could possibly do it.

Q. Well, what do you mean by that answer?

A. It is an expense that, in my opinion, should be assigned to the state or the locality where the service is performed.

Q. What reason can you give for that? Everything is founded on some reason, isn't it, in the way of accounting?

A. They handle, of course, the cars containing all classes of freight, and originating and destined to all points. One car may have in it freight that is destined to points all along the line, not only points within the state of Minnesota, but points within South Dakota. That car may move clear out to the other end and contain shipments that would be peddled out at different points along the line and at different points in the states, and there are similar items of expense that are occurring at other terminal points in the other states, and I don't think it can be done.

Q. Is there anything in the nature of the service rendered that would make the expense of those men in the state reciprocal to similar expenses in other states?

A. I should think so, all of them.

Q. Well, wouldn't that be a matter of chance, a good deal? On the other hand, wouldn't it be absolutely scientific to charge those expenses either to gross earnings of the system or distribute them according to the revenue-train mileage?

A. I shouldn't think so.

Q. Well, should not everything that depends upon the revenue-train mileage be distributed according to that basis?

The MASTER: That is, as between state and interstate?

Attorney General YOUNG: Well, yes, as to—

Mr. BUTLER: What do you mean, apportioned between Dakota and Iowa and Minnesota, or apportioned between Minnesota interstate business and Minnesota intrastate business?

The MASTER: Yes, that is what I mean.

Attorney General YOUNG: Apportioned for all purposes; apportioned so you would know how much of it belonged to Minnesota when you had ascertained the proportionate revenue-train mileage out of which it originated in this state.

WITNESS: You would bring in there an item of division-train mileage, that—a very large percentage of your train mileage might be within the state of Minnesota and would not have anything to do with intrastate shipments. I don't believe that any one basis would fit the case, and I don't believe that it would be practicable, and even possible, to make a division of an expense of this nature.

Q. To make a division of an expense of this nature?

A. Yes, sir.

Q. In other words, it should be localized, you think?

A. Yes, sir, I do.

Q. Isn't that the most unscientific thing that could be done with it?

A. I don't think so.

Q. So far as an accounting is concerned; aren't you totally in the dark as to how much of it really should be charged to general interstate business, or to the business which properly is assignable to the state of Minnesota?

Mr. BUTLER: Now, Mr. Young, do you mean by "the business that is properly assignable to Minnesota," interstate or intrastate business, or both?

Attorney General YOUNG: I take both.

Mr. BUTLER: The interstate business in Minnesota and the local business in Minnesota? The question itself, is—

Mr. O'BRIEN: I don't understand the question is up at all as to intrastate business or interstate business. He was talking of Minnesota.

Attorney General YOUNG: The business done in the state and the business done outside of the state is what I am talking about, whether it be Minnesota interstate or whether it be Minnesota domestic.

Q. You say here on this sheet that you have charged this up according to train-revenue mileage, but you haven't done so; you say you have localized it.

A. No, I said any item of expense that could not be localized that was common to the entire line, then those bases would be used.

Q. Give us the proportion or the part of the expense as to switchmen, flagmen and watchmen that cannot be localized.

A. There may not be any such item. That basis is simply to cover items that you cannot localize. Now, there is not an item of expense, hardly, in this entire list but what you will occasionally run across an item that is common to the entire line, and that is the basis furnished for such an item.

Q. The column here marked "Entire Line" on Ex. H hasn't really thrown any light on the solution of the apportionment, because there is such a large part of these expenses that you have, as you say, localized; you haven't divided them according to any proportionate method.

A. Oh, no, that is to cover expenses that cannot be localized, only.

Q. The first item appearing under "Station Service" on Ex. H, being cost of "switchmen, flagmen and watchmen" is entered upon this sheet as being $60,356.96 for the entire system; of which you have apportioned to the state of Minnesota a total

of $51,299.45. Please explain upon what basis you made this apportionment to Minnesota.

A. The expenses have been assigned to Minnesota according to the location of the men. Now, you raised the question as to the basis stated upon the explanatory statement which I have furnished you for use in connection with these exhibits, which gives, as the basis for dividing items common to the entire line or that cannot be localized for station service, total-revenue-train mileage. The account "switchmen, flagmen and watchmen" I have looked through for one year and do not find any items that were common. Every item of expense during the year that we have here we were enabled to charge direct to Minnesota, Iowa or South Dakota, according to the location of the men. This explanatory statement (I would like to make clear) is intended to cover or to furnish the basis that we will use in the event we should find an item that might be common to the entire line of the nature of switchmen, flagmen and watchmen, or telegraph expenses, or station service, or station supplies, but it will only be used in the event that we have an item of that kind.

Q. You looked and didn't find any item of that kind during the year 1907?

A. During the year 1908.

Q. During the year ending April, 1907?

A. This year we have brought with us is the year ending April 30, 1908,—but one year—and I have run through the abstract for that account for that year and do not find any item that was common to the entire line or any item that required us to use the revenue-train-mileage basis.

Mr. BUTLER: When you say "item" you mean any item of switchmen, flagmen and watchmen?

WITNESS: Any item of expense of the nature of switchmen, flagmen and watchmen.

Q. Do you think it is a fair division of expenses between

the business done in the state and the business done outside of the state when, for the entire year ending April 30, 1907, out of an expense of $60,356.96, you charge up $51,299.45 to the business in Minnesota?

A. Yes, sir, because the business was much heavier within the state of Minnesota, requiring these men located at points within the state.

Q. During the time when this business was done, forty-six per cent. of your mileage was in the state of Iowa; do you know how much of the total expense for switchmen, flagmen and watchmen was charged to the state of Iowa?

A. No, sir. I do know, of course, from the records at the office.

Q. But whatever it was, it had no relation at all to the mileage in the state, or this apportionment has no reference whatever to the mileage in this state, nor to the volume of business done; it is an arbitrary allotment because the expense physically arose in this state?

A. Yes, sir, but if you will go down to the item there of car-mileage balance, you will find there where we have total receipts of $74,000, and $71,000 of that is credited to the state of Minnesota,—almost all of it.

Q. What I want to get at mainly is whether or not your apportionment is fair. Out of the telegraph expenses for your whole line for the year ended April 30, 1907, amounting to $39,929.55, you have charged to Minnesota $23,333.11.

A. It required that much to handle the business within the state of Minnesota.

Q. Was that apportionment ascertained by a revenue-mileage basis, or did that arise out of the localizing of your charges?

A. That would be localizing.

Q. There was no apportioned item in there?

A. I think not, but I would rather examine.

Q. So far as you recollect, that would be,—?

A. That would be practically all localized.

Q. Now, about station service, the third item under the head of "conducting transportation,"—of the sum of $136,061.04 incurred during the year ended April 30, 1907, $90,162.57 is charged to the state of Minnesota?

A. Yes, sir.

Q. And that apportionment arises out of localizing the charges?

A. Yes, sir; station service would be practically the whole.

Q. Is there any item under the first subdivision upon this sheet relating to conducting transportation (that is, under the sub-head "station service") that was apportioned to Minnesota on the total-revenue-train mileage?

A. Practically none of it.

Q. Why do you, upon your sheet explaining the basis of apportionment, mark all of those items as being proper to be apportioned upon the total-revenue-train-mileage basis?

Mr. BUTLER: Let me call your attention to the caption of that sheet to which you have just referred.

A. I don't make any such claim.

Mr. BUTLER: It says "Expenditures that cannot be localized to any particular operating division or state are apportioned to the operating divisions or states using the following bases."

Q. And that basis is only used in the rare event of any general item of expense coming up under that head that you can't localize?

A. Yes, sir.

Adjourned until Friday morning September 11th.

FEDERAL BUILDING, St. Paul, Minn., Friday, September 11, 1908, the hearing was resumed at 10 o'clock a. m.

LEMUEL G. SCOTT,
recalled for further cross-examination, testified.

By Attorney General YOUNG:

Q. Now, Mr. Scott, your method in the apportionment of operating expenses between states of "localizing," as you put it, all the expenses actually arising in a state and charging those to that state may not be fair unless the conditions existing in the several states through which your lines pass are substantially alike; for example, if all of your important terminals were in Minnesota, notwithstanding the fact that your line is located in three states, it would not be fair, would it, in assigning Minnesota's share of operating expenses to it to charge it with all of the terminal expenses?

A. Why we thought that it was fair.

Q. Well, that isn't what I asked you. Do you know whether it would be or not?

A. Well, I think it is, yes, sir.

Q. Well, in the case that I have mentioned, how would you justify it? how would it work out so as not to place too great a burden upon this state, for instance, on the traffic done in this state?

A. Have you reference to any particular item of expense?

Q. Well, I am speaking now about the terminal expenses that we spent so much time on the other day and didn't get at very definite results upon.

A. Well, it was found out at the same time that the revenues for the state of Minnesota were increased to the extent of the full amount collected on these arbitraries.

Q. You know, do you not, that there are railroads operating in this state, which, if they charged all of their terminal expenses to Minnesota, would show that their Minnesota busi-

ness was done at a tremendous loss, when, as a matter of fact, it is not done at a loss at all?

A. I am not familiar with the conditions on the other roads. Possibly that might be true.

Q. It is true on the Burlington, isn't it?

A. I don't know. I have never made a study of the other roads.

Q. And it would be true on any road where the cost of maintaining the terminals in this state was out of proportion to the amount of its line in this state, as compared with the other states through which the road passes?

A. Possibly for that one item, if it was not more than offset in the division of other items.

Q. Have you made any arbitrary allowance in favor of Minnesota to offset the charging to it of the total terminal expenses in the state?

A. We credit to Minnesota the entire revenues derived from the assessment of those arbitraries.

Q. Do you allow anything in the shape of constructive mileage, or anything of that sort, to offset the terminal charges?

A. No, sir, not in the division of revenues. I will ascertain what the amount of those revenues collected is, and give you that information, which might be helpful in this connection.

Q. At your terminals in Minneapolis you maintain, I presume, a very much larger number of employes than you do at any other station on your system, do you not?

A. Yes; it is the largest point.

Q. You have an individual station there; you have switching crews and you have everything necessary to transact the business of a large terminal?

A. We have those also at other points.

Q. At smaller stations there are no switching crews nor switching locomotives, or anything of that kind, are there? That is all done in the way of train service?

A. No, we have switching crews at different points along the line.

Q. I am speaking about small stations.

A. Well, I have reference also to places where the station is a terminal one; it may be small, but it may be the terminal of a run, you know, and we have crews at those points.

Q. On your system will you state how many places there are where you maintain separate switching crews?

A. I couldn't do that offhand; I would have to ascertain from the records or the transportation department just where they are located. I know that we have them located at Des Moines, Iowa, and at Albert Lea, Minnesota; Fort Dodge, Iowa, Watertown, South Dakota; and we may have them at Estherville, Iowa, I am not sure; there may be other points besides those that I have named where we have switching crews.

Q. Yes, but you haven't at any of those stations, anything like the extensive facilities for handling the business that you have at Minneapolis?

A. No, not so large.

Q. Now, it is true, is it not, as a general proposition, that the expense of handling each unit of freight or of passengers diminishes with the density of the traffic?

A. I should think so.

Q. So that the expense per mile of road would naturally be less or ought to be less in a state where the traffic is dense than it would be in a state where the traffic is lighter?

A. Per mile of single track, yes, but perhaps not per mile of trackage actually used.

Q. I am speaking as a general proposition.

A. Well, that is general. In handling your business you must have passing tracks, and you must have your sidetracks, which are the industrial tracks, and your main tracks; but as a single-track proposition—

Q. As a main-track proposition?

A. Of course, it would be, unquestionably; but I should think the other item should be considered.

Q. Your evidence all tends to show that you are doing a greater amount of business in Minnesota per mile of road than you are anywhere else on your system?

A. Yes, sir.

Q. Isn't it true that, according to your method of apportionment of the expenses, by first localizing all the expenses that arise within the state and then distributing the other expenses (the common expenses) upon a revenue-train-mileage basis, it makes the cost of operating your road more per mile in Minnesota than it does anywhere else on your system?

A. We don't use the revenue-train mileage exclusively; we use also the locomotive and car-revenue bases, both. I am speaking now of locomotives separated as between passenger and freight, and so on.

Mr. BUTLER: When you said revenue, did you mean gross revenue?

WITNESS: Gross-freight revenue, or gross-passenger revenue, or total revenue.

Q. You don't use all of those bases as to any single item, you use them as to various different items, so that answering in that way simply confuses the subject.

A. Well, in your question you mentioned simply train revenue, and I thought that perhaps I had better make that clear.

Q. Yes, my question was faulty as well as your answer, so that I am to blame originally. But changing the proposition to a more general one, is it not true, taking your apportionment of operating expenses as a whole, that although your traffic is very much denser in Minnesota than it is anywhere else on the line, the cost of operation is also higher in Minnesota than anywhere else on the line?

A. Yes, because the train-revenue mileage is greater, the car mileage is greater, and all bases that we use are greater.

Q. Yes, but is not the expense more per mile of track and also more per unit of transportation (that is, per ton mile) in proportion to the miles of road in the state as compared with the ton per mile proportion to the miles of your entire system?

A. It naturally would be, I should think, because every train-mile calls for an additional expense in the way of crews and fuel and station service and all classes of service.

Mr. BUTLER: There were two questions included in that, General; he answered one of them, I think.

Q. How as to the unit of transportation, (if you can grasp my meaning on that,) isn't the cost higher per unit in this state than it is anywhere else on your line, according to your statements?

A. Per unit of what?

Q. Of transportation.

A. Well, that question would involve—There are several units: There are train miles, there are ton miles, there are car miles. A passenger is one mile.

Q. Yes, a ton is one mile.

A. Yes, I named that. I believe it would be lighter, if you will take the unit of tons one mile, although I am not positive, because our heaviest trains would be in Minnesota, and it would cost almost as much, (not quite), to run a train in Iowa, where, perhaps, the traffic is lighter; therefore, the cost per ton mile in Iowa would be greater than in Minnesota.

Q. The cost per ton mile in Iowa would be greater?

A. I should think so.

Q. And it would also be greater in South Dakota.

A. Yes, sir.

Q. Now, passing from the actual cost of moving the transportation, let me ask you whether it costs any more per mile to maintain your way and structures in Minnesota than it does in Iowa and South Dakota.

A. Per mile of single track?

Q. Per mile of any kind of track. Put it per mile of single track, if you will, per mile of main track.

A. I don't think so, unless you would consider that, in Minnesota, where the traffic is the heaviest, it would require heavier rails. We do have heavier steel, but a great deal would depend upon the line of road, through what country it runs; and as to the actual characteristics of the road in Minnesota as compared with Iowa, I don't know; in other words, as to the length of the bridges and items of that nature.

Q. The general character of the country is about the same through northern Iowa and southern Minnesota, is it not, as a general proposition? it is all a fertile farming country, without any great rivers or any great cities?

A. Yes, I think it is.

Q. Take your own figures from your Ex. H, it appears that the total cost of maintenance of way and structures on your entire system for the year ending April 30, 1907, was $460,918.96; of this sum you charge to Minnesota $247,144.58. Now, could you, without too much trouble, tell us what the average cost per mile of maintenance of way and structures was on your system and what the average cost was in Minnesota during that period?

A. Yes, sir. But the expenditures for maintaining your way and structures, if I may be permitted to explain, vary from year to year, according to the work that is required to be done.

Q. But it varies as much in one state as in another, on the average, doesn't it? Doesn't it work itself out about even?

A. Oh, it would, in a long period of time.

Q. Wouldn't it in any period of one year, for instance?

A. Oh, no, not necessarily.

Mr. BUTLER: They might rebuild something in one state and not in another, General.

WITNESS: Sometimes they will do very heavy work within a year in one state and practically nothing in another of that

nature, and it changes from year to year.

Q. But you have picked out three different periods for which you have given us a statement of the operating expenses. Now, isn't it a fact that in every one of those periods the percentage of expense of maintenance of way per mile is very much greater in Minnesota than it is on your whole system, according to your method of figuring?

A. No, sir, for you take the period of ten months ending April 30, 1908, and it is less than half.

Q. Well, at that time there was less than one-third, or only about one-third of the road in Minnesota; it ought to be less than half.

A. Yes.

Q. It is out of proportion to the other parts of the road, though, isn't it?

A. But the additional mileage was all new mileage. There would be very little additional expenditures because of that new mileage, I should think. But these statements would indicate for those periods that Minnesota's expenditures for maintaining its way and structures was greater than the single-track mileage per cent of the total mileage, but I don't believe that it would if you take in the full track mileage, including passing-tracks and sidetracks, because Minnesota has a great many more miles of that kind of trackage than Iowa or South Dakota.

Q. Are you expressing that opinion on any computation you have made, or is it a mere guess?

A. Oh, I know it.

Q. Have you ever figured it out?

A. Yes, we figure it out every year.

Q. Of course, it is a mere matter of computation, we can figure it out all right.

A. It could be determined by taking the report to the State of Minnesota.

Mr. BUTLER: It is all included in the reports, is it, from year to year?

WITNESS: Yes; that could be determined from that report.

Q. Yes, I know we can determine it; it is a matter of computation, but I wanted you to do it while you were testifying on that subject. Counsel suggests that you should make clear whether in giving us the mileage of your road you have included passing-tracks and sidetracks in designating your single-track mileage, or whether you have not.

A. I have not. I have not included the passing-tracks nor the industrial tracks.

Q. In Ex. 3?

A. Yes, sir.

Q. There is very little expense in maintaining passing-tracks and industrial tracks, is there, except the natural depreciation?

A. It is some lighter.

Q. The mileage included in your statement is your general commercial trackage, the main trackage irrespective of passing-tracks or industrial tracks?

A. Yes, sir.

Q. Computing upon that basis, (as it seems to be the proper one) will you kindly make that computation,—the average cost per mile of the maintenance of way and structures during the year ending April 30, 1907, on your system, and the average cost in Minnesota?

A. (After figuring). In Minnesota $603 per mile; entire line $560 per mile.

Q. That result was obtained in the same way as the other apportioned items of operating expenses, that is, all items that were local were charged to the state and all indirect items apportioned on the total-train mileage?

A. Practically all of it is expenses that were and can be allotted direct to the state, or expenses occurring within the state,

with the exception of engineering and superintendence. That expense is apportioned among the states on the basis of the total-train mileage.

Q. Do you keep a local account of the repairs and renewals of bridges and culverts under the head of maintenance of way?

A. Yes, sir; we keep a separate account with every structure on the line. We can tell you the amount of money that we have spent on every structure in the nature of a bridge, a culvert, a trestle, a station building, or any structure that would appear under this item of maintenance of way and structures. We can tell you just exactly how much money we have spent on that structure or any structure for several years.

Q. And you localize all those expenses to the several states where they occur, do you, where they arise?

A. According to the state within which the structure is located.

Q. You don't do that with renewals of fences, snow-fences, signs and cattle-guards, and things of that kind?

A. Yes, sir.

Q. You charge them up to the particular place where they happen to be either replaced or repaired?

A. Yes, sir, to the particular state or location.

Q. You know the particular locality where it is done?

A. Yes, sir, we do.

Q. You keep an account with the expense so that you know just where it occurs and you charge it to the state in which it occurs?

A. Yes, sir.

Q. The average cost per mile of renewal and repair of fences, ties, and things of that kind, is about the same in the various states, is it not?

A. Per mile of main track and per mile of passing-track and per mile of industrial track, it would be practically the same.

Q. Well, you say that you have not taken any account of passing or industrial tracks so that you are talking now about main tracks.

A. Well, if you have reference to the item of expense, you would have to take into consideration the mileage of passing-tracks and industrial tracks because we use ties with all of it.

Q. Yes, but ties would be in a different class from fences in that regard.

Mr. BUTLER: Ties and rails both.

Q. Are not fences and things of that kind charged up to the division in which the repair is made and not to the particular section of the track in which it occurs?

A. The section of the track is usually within a certain division. We have reference to an accounting division, or state-line division.

Q. Well, your divisions are not established with reference to state lines; you have certain divisions on your system?

A. Yes, sir.

Q. Within which certain expenses occur. Now, those expenses are charged to that division, are they not?

A. Yes, sir; but if that division happens to cross a state line we make two divisions of it, and we keep, therefore, the items of expense of that particular division within the state entirely separate from any expense that is within another state. We create two divisions where an accounting division crosses a state line.

Q. You create two divisions?

A. We make two divisions.

Q. And you charge those expenses to the state in which they arise?

A. Yes, sir.

Q. In all cases?

A. In all cases.

Q. What do you mean by entering upon Ex. H-2 the state-

ment that these expenditures are apportioned according to the total train mileage?

A. I can explain it if you desire. Take, for instance, the supervisor of the bridge and building department, any expenses in connection with his office cannot be charged to any particular state nor any particular division; it cannot be localized; therefore, we must have a basis for separating that expense among states and among accounting divisions. That is one item.

Q. Well,—

A. Take supplies.

Q. What has train mileage to do with that expense? Isn't that a mileage expense for the road rather than for the train mileage? He is a general officer, isn't he? He is in charge of that kind of business which doesn't depend upon train mileage?

A. A great deal does; in our judgment, train mileage was the best basis.

Q. Isn't the larger percentage of it due to natural depreciation, and isn't it a per-mile cost for the road?

Mr. BUTLER: What do you mean, the superintendence and the stationery for the roadmaster's office, and things like that?

Attorney General YOUNG: Anything in relation to the reconstruction of bridges, fences, or replacing of ties, anything that is perishable.

A. We use the train mileage because of the basis of use; we thought that was the most fair. Perhaps we are wrong, but in our judgment,—

Q. It isn't the most fair, is it, by charging to the state that furnishes the greater traffic the largest percentage of that item of cost?

A. He spends perhaps most of his time there.

Q. But it is not giving to the state that produces the greatest amount of traffic any advantage which should arise out of

the fact that it does produce the greatest amount of traffic. In other words, the traffic costs more in proportion as the volume increases?

A. Yes, but we have greater facilities within the state that he must look after.

Q. But, as a matter of fact, the work that the superintendent there does will very nearly average itself out on the entire line, will it not, as a matter of general experience?

A. Per mile of single track?

Q. Per mile of single track.

A. No, sir, I shouldn't think so at all.

Q. Shouldn't think so?

A. No, sir.

Q. And you think that that officer's services should be charged up per total train mile?

A. That was our judgment.

Q. And by that process your judgment enabled you to charge the greater part of it to the state of Minnesota, didn't it?

A. Now, I can give you other illustrations, if you care for them.

Q. Isn't that true? Answer my other question.

A. I didn't hear you.

Q. I say by the exercise of that judgment on your part you were enabled to charge the greater part of this expense to the state of Minnesota?

A. Train mileage is heavier in Minnesota, yes.

Q. During the period covered by this subdivision of Ex. H–1–Scott, which covers the ten months ending April 30, 1908, you were operating a total mileage of 1028 miles, were you not?

A. 1028 miles.

Q. Of that amount of mileage, in round numbers there was, in Minnesota, thirty-eight per cent.; in Iowa thirty-six per cent., and in South Dakota twenty-six per cent., was there not?

A. Yes, sir.

Q. In other words, there was a trifle over one-third of your mileage in Minnesota during this period?

A. Yes, sir.

Q. I find under the head of General Expenses that the total expenditure for your system for that period was $37,566.45 for salaries and expenses of general officers.

A. Yes, sir.

Q. And of this amount you charged Minnesota $24,803.85.

A. Yes, sir.

Q. Leaving the total of this expense in the other two states $13,252.60.

A. Yes, sir.

Q. Under the same head, salaries and expenses of clerks in attendance for that period on the entire system was $28,757.24.

A. Yes, sir.

Q. Of which you charged to Minnesota $19,073.61.

A. Yes, sir.

Q. Leaving to the other two states $9,683.63.

A. Yes, sir.

Q. Of general office supplies for that period the cost to the system was $3,846.82, of which you charged to Minnesota $2,517.79, leaving the total cost for this item to the other two states $1,329.03?

A. Yes, sir.

Q. Under the same head I find that the total cost of the general administration of joint tracks, yards and terminals for that period was $402.72 for the system; is that correct?

A. Yes, sir.

Q. And for the same time the cost for Minnesota was $417.72. In other words, it cost more in Minnesota than it did for the entire system; is that correct?

A. I don't understand why that is not a credit, unless it is that, under the new classification that went into effect July 1,

1907, there were some items of expense that were carried forward from the previous year and got into this year through the delay in the rendering of bills against other roads.

Q. Well, it is on the debit line.

A. It is, for the period of ten months, but—

Q. It certainly isn't correct, is it, where it costs more in Minnesota for that item than it does for the system?

A. Well, ordinarily that would be a credit item. That item is to cover the amount of the bill against other roads for their proportion of the executive expenses incurred in connection with the operation of the joint property.

Q. Well, whether it is a debit or a credit it is wrong, isn't it, because it is larger for the state than for the system?

A. Well, it wouldn't be larger but it is evidently some small item that has gotten into this year's expenses through the delay in rendering a bill.

Q. Well, the entry is an error, is it not? It must be.

A. No, I don't think so, but it is one that you can't analyze and find out the cause for it being so. Evidently the distribution has been correctly made, but, of course, there is a possibility of an error creeping in there.

Q. There is a possibility. Well, certainly isn't it true that, either as a debit or a credit, it couldn't be larger for Minnesota than for the system?

A. Oh, no, there is some adjustment when they are carried forward from the previous year, evidently.

Q. On this same exhibit I notice under the head of maintenance of way and structures that the debit charge for maintaining joint tracks, yards and other facilities for your entire system was $38,339.52, and the amount of that charged to Minnesota was $27,368.37, which would leave to be charged to the other two states, in which two-thirds of the road was situated, $10,971.25.

A. Yes, but not two-thirds of the joint track operated. Most

of the track operated jointly in connection with other roads where the other line maintains the property, is within Minnesota and is practically within the Twin Cities.

Q. Let us go, then, to the very next item to that, which is the credit entry on the same subject. We find that, in the credit account for maintaining joint tracks, yards and other facilities for the same period for the system, there is $30,734.59, of which Minnesota gets credit for only $10,198.74.

A. Minnesota gets credit for the actual amount billed against the other road for joint trackage within the state. Now, it so happens that we have a trackage arrangement with the Chicago, Rock Island & Pacific in Iowa, between Gowrie and Des Moines, about sixty-five miles that we maintain, and that we bill against them for that portion, and their proportion of that expense is larger than what joint trackage we have within Minnesota where we lease the privilege to another line to operate over. It is an expense that depends upon the mileage operated jointly, either where we are the tenant line or where we are the owner.

Q. Well, those are identical items, are they not, the maintaining of joint tracks, yards and other facilities, debtor and creditor?

A. Yes, but the mileage is not the same in either case, by any means.

Q. It is not?

A. No, sir.

Mr. BUTLER: It depends on which way the balance would fall, a good deal?

WITNESS: Exactly. If you want me to explain that I can do so.

Q. We are charged with two-thirds on the debit side and only given credit for one-third on the credit side.

A. Because of the fact that we own a larger trackage in Minnesota, whereas, on the other hand, we lease a larger track-

age in Iowa. In one case we are using the property of another company, in the other case another company is using our property. Now, it so happens that the other company uses a greater mileage of our property than we use of the other's.

Q. Well, isn't it true, as a general proposition (passing over these two exhibits H–Scott and H–1 Scott) that, on every item, there is a very much larger percentage of the cost charged to Minnesota than to other parts of the road in every debit item?

A. Oh, no, it is not true with all of them. Take repairs roadway and track for the ten-months period, Minnesota is charged with $86,000, whereas the expense for that item for the the entire line is $205,000 and more.

Q. That is more than its proportion of the one-third, at that. I am averaging it now per mile for the purpose of illustration. That was new roadway built in other states, wasn't it?

A. Well, no cost of the building of new roadway anywhere is charged to operating expenses.

Q. How is that?

A. No proportion of the cost of building a new road is charged to operating expenses.

By Mr. DURMENT:

Q. How do you account for so big a difference, then, during that ten months?

A. That there was less work of that nature, perhaps, done within the state than there was in other states. That is exactly in line with the explanation I made a while ago.

Q. No, but in what particular matters was there less work done in Minnesota, and in what particular matters more work done outside of Minnesota, during those ten months to make that great difference? What I am asking is, what were the unusual or extraordinary circumstances that reversed this situation during that ten months?

A. It may be one of several. It may be that they were reballasting, or they may have been repairing some portion of

the track that was specially in need of it at that particular time; it may have been general overhauling.

Q. You don't know, then, what it was?

A. Oh, no.

Q. But it was an unusual—

A. Yes, I do know—Mr. Carleton has called my attention to one item that I do recall—we were re-laying rail, placing in a heavier weight of rail to replace a lighter weight on the line in Iowa, the Des Moines and Fort Dodge property, and the entire labor expended in connection with renewing that rail is a charge to operating expenses. The difference between the weights of the rail, based upon the price of the new, is added to the value of the property, or, in other words, charged to capital, and that is one reason why that item ran up quite heavy. Just as I said before, you know, it was some special condition. They were renewing a good many miles of rail within Iowa during that ten months and it ran the labor charge up. Now, some other time they may be re-laying in Minnesota and it would run the labor charge up in Minnesota. I remember now that they were doing that work there, they renewed fifty or sixty miles of track.

By Attorney General YOUNG:

Q. Under the head of Contingencies, take the item of "injuries to persons," how was that apportioned?

A. To the state within which the injury occurred.

Q. Was there any reason for that? Suppose you were running a train from Minneapolis to Watertown, South Dakota, and a person happened to be killed somewhere on the line by your passenger train making the through trip, the killing occurs in Minnesota, is there any reason why that should be charged to Minnesota?

A. I should think so. I don't see why South Dakota or Iowa should be charged with any proportion of an expense of that nature.

Q. That is an interstate train.

A. It is true, but the accident occurred within the state of Minnesota, and why should Iowa and South Dakota be charged with an expense, or any proportion of it, where they were not responsible or the accident did not occur within their boundaries?

Q. Isn't that a part of the expense of operating your system of railroad? Why should Minnesota be blamed because you happened to kill a man in Minnesota with an interstate train? Why should Minnesota be charged with the total expense?

A. Well, for the reason that I have just stated.

Q. Because it occurred in Minnesota?

A. Yes, sir.

Q. And if there is a rate case in Minnesota, it would be to your advantage to charge it to Minnesota, wouldn't it?

A. Well, General, these accounts are kept regularly with respect to every state, they all make no distinction.

Q. Referring to Exhibit H–Scott, covering the year ending April 30, 1907, the total expense to your system for injuries to persons was $138,939.20?

A. Yes.

Q. Of which you charged to Minnesota $121,367.72; that is correct, is it?

A. It is correct. The principal part of that is the result of a passenger-train wreck at New Prague, Minnesota. The exact date I don't remember, but it occurred within this period.

Q. That was an interstate passenger train, was it?

A. Well, it was a train handling both intra and interstate passengers, but I am unable to say what class of passengers those injured were.

Q. And without regard to whether they were traveling on interstate transportation or intrastate transportation, the cost of the loss to the Company would be charged to Minnesota be-

cause it happened in Minnesota?

A. Yes, sir.

Q. Calling your attention to Exhibit H–1, the same item, I find that during the ten-month period ending April 30, 1908, your expense for the system for persons injured is $77,410.04, of which you charge to Minnesota $59,711.60; is that correct?

A. Yes, sir.

Q. Now, there was no New Prague accident there, but the proportions seem to be about the same.

A. The settlement may have been delayed. We pay some claims several years after the accident actually occurs, especially if it is under litigation.

Q. Isn't it true that during all this period covered by your exhibits Minnesota got so much the worse of it in the matter of injuries to persons?

A. No, sir, it is because (principally on account of that one accident) the period of settlement stretched out over a long period of time.

Q. Would you give us the details of this item of "injury to persons" shown on Exhibit H, the one that I refer to?

A. Do you wish it for both H and H–1?

Q. No.

A. You have been inquiring, you know, into both of them.

Q. Well, I just wanted to take this last one.

Mr. BUTLER: Bring them both.

Q. You are clear, are you, that the New Prague accident affected this item on both sheets?

A. I am sure of it, but this statement that you have asked for will give that information, because in that statement I will show where the accident occurred in each case, and I can give it to you in just as much detail as you please.

Q. The New Prague accident was an extraordinary catastrophe?

A. It was.

Q. And the greatest, probably, that your Company ever had?

A. I think so.

Q. The inclusion of all of the cost of that catastrophe would very unduly augment your operating expenses for the period covered by these sheets, would it not?

A. It would.

Q. And that fact ought to be taken into account as to whether or not these are average operating expenses, ought it not?

A. Outside of that item they are heavier than they ever were before.

Q. They seem to be pretty heavy for Minnesota.

A. Not any more so than its proportion based upon other years, I imagine, because we have been using the same distribution for a number of years.

Q. Is there anything anywhere in your system of distribution that would give Minnesota any advantage arising from the fact that it furnishes you the greatest amount of transportation per mile?

A. Yes, sir; per diem rental collected from foreign lines for use of home cars. Also higher equipment.

Q. What are you reading from?

A. I was not reading from anything, I was just giving you an expense that would be benefited by the use of the bases.

Q. To make it a little clearer, you testified a few moments ago that the cost per unit of transportation of operating your trains in South Dakota and in Iowa would be greater than it is in Minnesota by reason of less density of the traffic in those states.

A. I should think it would be.

Q. Now, where have you allowed Minnesota any credit or advantage in the distribution of the expenses of operation which naturally arise from the fact that the traffic in Minnesota is more dense than in the other states?

A. Iowa and South Dakota would be charged with the cost of running the trains in Iowa and South Dakota, and so would Minnesota be charged with the cost of running the trains in Minnesota.

Q. But under your system of apportionment, isn't it true that Minnesota is charged a greater proportion of the operating expenses because it furnishes a greater proportion of the business?

A. More trains run, more cars, larger.

Q. But isn't it penalized for furnishing a greater density of traffic than the other states—

A. No, sir.

Q. —in your apportionment of the expenses?

A. No, sir, I don't think so.

Q. Isn't that the way it works out?

A. No, sir, I don't think so.

Q. I am speaking about those expenses that are general in their character, indirect in their character, and that are apportioned upon an arbitrary basis.

A. Because the terminals handling the heavy business are all within Minnesota. There would be no question about train service, engine service, fuel, or any item of expense in connection with the handling of those trains that would be allotted direct to Minnesota. Now, the trains that pass over the state line are practically the same class of trains or of the same character. To illustrate, from Albert Lea to Des Moines, from Morton, Minnesota, to Watertown, South Dakota, from Winthrop, Minnesota, to Estherville, Iowa, the trains passing over those state lines are trains of practically the same class and character, and each state would be allotted its proportion of the expense based upon the miles run by the train in each state. Our heavy trains are between St. Paul and Albert Lea, therefore Minnesota would get the full amount. The same is true of our trains on the western division between St. Paul and Win-

throp, there is where there are the heavy trains, Minnesota would get the full allotment; beyond those points they are practically the same class.

Q. But if you are apportioning the general operating expenses to states entirely on the train-mileage basis, or on the gross-earnings basis, either, aren't you giving the state that furnishes the greatest amount of traffic the worst of it?

A. Well, but we only apportion to Minnesota its proportion of the train miles where that train crosses the state. We distribute each individual train. And the same is true of fuel that is used on the locomotive passing across the line, that fuel is divided between the states based upon the mileage of each individual locomotive; we don't throw it into a general pot and then allot it.

Q. Well, if you don't throw it into a general pot and allot it how do you get at it?

A. We charge, as I said, to Minnesota,—take a train from Winthrop to Watertown: That train runs a certain number of miles within Minnesota and a certain number of miles in South Dakota, the wages of the traincrew, the wages of the enginemen, the fuel burned on that locomotive, the entire expense of that train, is divided between the two states, based upon the mileage of that train from Winthrop to Watertown. If we had thrown all of our train expense and engine expense and fuel expense into one pot and then made the allotment, it might be some different, but bear in mind that our heavy business is between terminals within Minnesota, therefore those locomotives burn more fuel, it takes a larger locomotive, it takes a larger crew, the expenses are larger all the way through. Now, the expense of that crew, etc., of course, is allotted to the state of Minnesota because it begins and ends within the state of Minnesota.

Q. We are making no objections to your allotting to Minnesota any expense which begins and ends in the state, but what

we are objecting to is your allotting to Minnesota more than its proportion of the expenses which do not begin and end within the state.

A. I don't think we do, General.

Q. Well, your sheets here give us the impression that you do.

A. Well, bear in mind that the train mileage governs that and I have explained our system.

Q. You have said heretofore that the unit of expense is less in Minnesota than in other states and you now say that you do divide the expense, the common expenses that are arbitrarily apportioned, on the train mileage, which would involve the theory that the expense of operation was just as great in this state as in the other states; in other words, Minnesota fails to get the benefit of the fact that the cost of operation in this state is essentially less per unit than in the other states.

A. Now, by per unit do you mean train mile or ton mile or car mile?

Q. Well, take ton mile.

A. Well, I believe it will be less per ton mile. It will not be less per train mile because the trains are heavier. Per car mile would probably be less.

Q. Well, do you endeavor to get at any basis of apportionment that would give Minnesota any advantage—

A. We endeavor to be fair.

Q. —to give it its fair advantage arising out of the fact that the cost of operation is absolutely less here?

A. Our endeavor has been to be fair, and I have been criticised for going into such detail in making the separation by some of my brother accounting officers.

Recess until 2 P. M.

AFTERNOON SESSION.

Q. We were talking about the increased expenses in the single item of injuries to persons for the years 1907 and 1908 which arose out of the New Pragne disaster. Are you able to state about the average of the annual expense of your road for that item for other years near the dates of 1907 and 1908?

A. For the year ended June 30, 1906, $27,490.22.

Q. For the entire system?

A. Yes, sir.

Q. Can you give us the amount for Minnesota?

A. No, sir, not here. That is for the entire line. For the year ended June 30, 1905, $32,340.94.

Q. That is also for the system?

A. Yes, sir. In 1904, $21,660.91.

Q. In your annual reports to the State of Minnesota rendered to the Railroad & Warehouse Commission have you apportioned your operating expenses in the same manner and upon the same bases that you have apportioned them in your exhibits H and H–1?

A. Yes, sir.

Q. From an examination of the records of the Company as you have them before you, it is plain that the particular item to which I have just been calling your attention—that of injuries to persons—during the two years covered by Exs. H and H–1, was abnormal, and that in the year ending April 30, 1907, the expense for that item alone was at least $100,000 more for this state than the normal expense for injuries to persons, and augmented the operating expenses chargeable to this state for that year by that amount?

A. They were abnormally large, yes, sir.

Q. Could you furnish us with a statement of just what the terminal expenses for Minnesota were during the periods covered by Exs. H and H–1, especially the expenses at Minneapolis, or have you got it here?

A. No, sir, I haven't it here.

Q. And also the terminal expenses for the same period on your line in the other states into which the line goes?

A. Of course we can do it by going through all the different labor and material and vouchers and bills, etc. and pick it out. You see that is done as each voucher or each bill or each distribution passes through the records; it is entered into an abstract record. Now, it would mean that we would have to get at—

Q. We don't care about the exact details of it.

A. It would be quite a big undertaking. It can be done, of course.

Q. You have got it somewhere, haven't you?

A. It is not kept separate.

Mr. DURMENT: Don't you keep a separate account of that just as you do your stations?

WITNESS: No. You see every item of expense in connection with terminals would be entered in this abstract under our St. Paul division and against the different items of this account; it would come from all kinds of sources; every voucher, every bill affecting that, or from labor distribution of the various kinds, transportation and maintenance of way, and the other distributions, would have to be examined in order to determine just which items affected Minneapolis alone. It would be entered in what we call our Albert Lea division, which is from Minneapolis to Albert Lea.

Q. Your St. Paul division, also?

A. Then we have another division for St. Paul.

Q. What is the St. Paul division?

A. From St. Paul to the passenger station limits in Minneapolis; and then the passenger station limits and the freight station limits in Minneapolis would be on the Albert Lea division.

Mr. DURMENT: Have you any account on your books which

might properly be called an account of terminals where you can get the total of the cost of maintenance of the operation of terminals on all your lines?

WITNESS: Where we use the terminals of another company —we would not have a bit of trouble in getting at the expense of terminal properties in St. Paul where we use the terminals of the Northern Pacific and it comes through a bill; but where we maintain them, you know, the items of expense come through so many different sources that it would be quite a lengthy job to get at it.

Mr. DURMENT: But what I meant was, have you any account on your books which, when you summarize it, gives the total cost of operation or maintenance of terminals for your line.

WITNESS: No, sir. You see there are a good many items; there is switchmen, watchmen and flagmen, telegraph service, station service, station supplies, your conductors and your brakemen and heating and lighting, and it goes all the way down the list. It would be a big job.

Mr. DURMENT: You never segregate any one of those items?

WITNESS: We segregate them by accounts but not by individual stations.

Mr. BUTLER: By charges for service?

WITNESS: It is by accounts here, in the nature of the service that is rendered; we keep it by that account, and then by divisions and by states.

Q. Could you get it for a month or two months?

A. Oh, yes, certainly, easier than for twelve months.

Q. Would it be a very serious undertaking to get it for a month?

A. Oh, no, we will take the time to get it.

Q. If you will bring it to us for a month, at your convenience.

A. Yes, sir. Would you mind selecting a month and not leave it to me?

Q. We have been treating April and October as typical months; say October, 1907.

A. I could do this. I have this by months, you know, and I could endeavor to get an average month.

Q. Take October, 1907.

A. Well, that would probably be the heaviest month we have in the use of our terminals in Minneapolis, that particular item.

Q. It would be the same at the other terminals, also, would it not?

A. No, I hardly think so. It would not be true of Des Moines. The grain and the products of agriculture do not move that way. You see we haul the agricultural products and they pass through and go on East and never touch Des Moines. Des Moines would not be affected like Minneapolis. October would be practically the heaviest month in the year.

Mr. DURMENT: What month in the year would they run about the same, relatively, about the same relative density of traffic between the terminals?

WITNESS: I don't know; as I say, I would have to examine the records to determine that.

Q. If you can make it for October without too much work, we would be glad to have you do it, or any other month to suit yourself.

Mr. O'BRIEN: Take October, 1907, and any other month that you choose yourself, to show us the difference.

Q. Calling your attention to Ex. 9–Scott, you were asked a question heretofore in your examination as to why the operating expenses for the year ended April 30, 1908, were greater than the operating expenses for the year ending April 30, 1907, in view of the fact that there was less business done in the latter year than the former, and you stated, I believe, that you would furnish an explanation of it. Have you that explanation ready?

A. I don't remember that, but I think I can explain it, at least in part.

Q. To refresh your recollection, Mr. Scott, my associate suggests that you stated that when Exs. H and H-1 were presented to the Court or were under preparation at the time the question was asked you, they would show wherein these increased operating expenses arose; can you point out in those exhibits where the evidence of it is, where the explanation is?

A. Ex. No. 9 shows the increase for the year ended April 30, 1908, over April 30, 1907, to be $337,534.18.

Mr. DURMENT: That is both freight and passenger?

WITNESS: That is the total. $37,874.82 is due to the decrease in receipts from rental of equipment; $71,250.06 is due to depreciation charges upon equipment for the ten months ended April 30, 1908, there being no similar charges to operating expenses during the year ended April 30, 1907. The item renewals of ties is responsible for about $20,000; repairs of roadway and track for about $51,000; the increase in the cost of fuel consumed by locomotives and the cost of handling is $59,000; the increases in the various items of cost of transportation other than the fuel (which I have already covered) namely, yardmen, trainmen, enginemen and stationmen, are due to various wage schedules that have been executed during the two-year period covered by these tables, namely, the two years ended April 30, 1908; for some of these schedules were in effect during the entire year ended April 30, 1908, and only in part during the year ended April 30, 1907; but still they affect the comparisons. The schedule of station men went into effect November 1, 1906, which includes agents and telegraphers; the schedule of enginemen, June 1, 1907; switchmen, November 1, 1906; trainmen, January 1, 1907; and the increases in other items of expense other than transportation were affected by the following schedules: machinists and boiler-makers, October 1, 1906, and again, on October 1, 1907; blacksmiths, Decem-

ber 1, 1906; car-repairers, including the various classes of labor in connection with that line of work, June 1, 1906; and again on September 1, 1907. There was no increase really in the account of injuries to persons for the two periods, they are practically the same.

Q. That item for the loss of rentals, which you gave as something over $30,000, was not a permanent one, was it? That was simply a part of the operating expenses or loss for that year?

A. Cars earning less revenue for one year than they did during the other; that is, the equipment was more at home during one year than it was the other, or, we may have used more foreign equipment on our line than we did during the other year.

Q. That was a mere business fluctuation in the use of equipment?

A. Yes, sir.

Q. And wasn't anything of a permanent nature?

A. No, sir, it fluctuated.

Q. It is nothing of a nature that ought to be treated as a permanent increase for the future in operating expenses?

A. No, sir.

Q. How about that $71,000 depreciation in equipment that was charged up that year,—was that an item that occurs annually, or was it something special to that year?

A. It occurs now monthly, and, of course, will, annually. It started with July 1, 1907. We have ten months' charges in the statement for the year ended June 30, 1908.

Q. That is one of the items that the Interstate Commerce Commission has required you to keep as a separate item in your account, isn't it?

A. Yes, sir. The Interstate Commerce Commission have instructed that depreciation charges on your equipment shall be made.

Mr. BUTLER: Did they fix the rate?

WITNESS: No, sir.

Mr. BUTLER: The rate is fixed by the Company?

WITNESS: We use two per cent per annum.

Q. What you intended to charge up that year was the difference between the then value of your equipment and its value new, was it?

A. It is supposed to be the annual depreciation on the value of your equipment, but it is very much in the nature of an experiment, as I would understand it.

Q. Well, what was it you intended to include in this first charge in your accounting under the new method prescribed by the Interstate Commerce Commission? Was it the depreciation for that year only, or was it the depreciation in your equipment so as to make it equal to new?

A. It was a depreciation charge required by the Commission to be made.

Q. For that year only?

A. For that period of ten months only.

Q. And that charge was made upon the same basis as the charge will be made in subsequent years under that system of accounting?

A. Well, it may be changed. The per cent can be changed.

Q. Can be changed?

A. Yes, sir.

Q. It is an arbitrary percentage of two per cent, you say, that year?

A. We used two per cent.

Q. And you used that upon the theory that there was an actual depreciation of two per cent?

A. Hardly; because we were required to do it. As a matter of fact,—

Q. Did the Interstate Commerce Commission prescribe the percentage?

A. No, sir.

Q. How did you get at the percentage?

A. From the past history is the only way that we had to determine.

Q. Well, we get back to the question I asked you, then: You used two per cent because you believed that was the actual percentage of depreciation, didn't you?

A. According to the past history; but that would not cover for the future. The equipment now is being bought more of a standard size, and if maintained completely ought to last indefinitely; but during the past period of railroading that has not been the case.

Q. So that this charge would be in a sense abnormal, then, larger than the charge that would need to be made in subsequent years?

A. It may be found so, yes, sir.

Q. It is impossible to say?

A. But you see on a basis of two per cent you figure a period of fifty years; it is rather low, but we figured it was about right.

Q. From your past experience you think now that period will be prolonged?

A. It is liable to be.

Mr. BUTLER: Does that apply to box-cars?

WITNESS: All equipment. We made no variation in the per cent. We used the same per cent for all classes of equipment.

Mr. HOW: It will take more than fifty years, won't it, if you take 100 per cent? take off two per cent, then you have 98.

WITNESS: We start with 100 per cent for each individual car. We carry that car until it is dismantled, disposed of.

Mr. HOW: Then you don't take two per cent upon the 98 per cent which you have left?

WITNESS: Oh, no; we start out with a certain valuation, and if a car is dismantled or destroyed in a wreck or taken out of service, the value of that car is credited to the original amount

upon which we have been basing our per cent of depreciation.

Q. The $20,000 which you charged up in 1908 for renewals of ties was not a regular annual charge, was it?

A. That is an annually recurring charge.

Q. Well, at that amount?

A. Not exactly; it depends upon the number of ties that must be renewed.

Q. And in that year you found that it cost you $20,000 more for the renewal of ties than it did the year previous?

A. Yes, sir, the cost per tie was a little more during the latter year, of very nearly three cents per tie.

Q. It might happen that the succeeding year you would spend $20,000 less than you did in 1908?

A. Yes, sir.

Q. That expenditure is one that would have to be ascertained by taking into consideration a period of years in order to get a fair average, would it not?

A. Well, it is, but we have evidently—we have certainly reached that period of years. The average life of a tie is not more than eight years—seven or eight years. They have got to be renewed about—

Q. An oak tie?

A. That is my recollection.

Q. I think you are mistaken about that.

A. Well, we use a great many cedar, and I may have that in mind. We are beginning to use treated ties now.

Q. But, irrespective of that question, what I want to get at is, do you charge up a fixed amount annually for the renewal of ties, or do you simply charge up the actual expenditure?

A. The actual expenditure.

Q. And that varies from year to year?

A. Yes, sir, it does.

Q. But a fair average could be reached by taking a period of years, say five years?

A. And the number of miles of the entire trackage maintained.

Mr. BUTLER: And the condition at the beginning of the five and at the end.

Attorney General YOUNG: Yes.

Q. But in this particular instance, this is an arbitrary charge, in a sense; that is, it is the actual expenditure for that year and is not an indication of what the cost of renewal of ties would be annually?

A. No, sir, not exactly.

Q. And how about the $51,000 expended during that year of 1908 for repair of roadway and track? That is an actual expenditure for that year, also?

A. Yes, sir.

Q. And is not intended to represent any average of expenditure for that subject of expense?

A. No.

Q. That was an increase that year over the previous year?

A. Yes, sir.

Q. And the expenditure for that item in the succeeding year might be that much less, depending upon the facts?

A. Depending upon any work of a special nature that they might do.

Q. Was there anything extraordinary in the way of roadway and track repair that year?

A. Well, it cost something to lay the additional ties. Then we replaced some light rail with heavier rail on one of the divisions in Iowa. Then the additional mileage operated would add some.

Q. These expenditures are all for the system?

A. Yes, sir.

Q. And that item of $51,000 arose to a large extent out of replacing lighter rails with heavier rails in Iowa that year?

A. The expense of laying the additional ties and the additional mileage operated.

Q. The $59,000 which you said to be an additional cost for fuel and handling, did that arise to any extent from the increased mileage being operated, or was there anything abnormal about the quantity of fuel used or any abnormal change in the price?

A. There was a coal-miners' strike during the month of April, 1908, that would affect it some; the cost per ton was greater during the latter year.

Mr. DURMENT: Cost per ton—

WITNESS: Of coal.

Mr. DURMENT: Paid to the man you purchased it from?

WITNESS: Yes, sir. There was an additional tonnage used, however.

Q. Some additional tonnage?

A. Some additional tonnage used because of additional locomotive mileage, which would also add to the cost of handling.

Q. That is not, in any sense, though, an annual fixed increase?

A. It depends upon—

Q. It fluctuates?

A. It depends upon the locomotive mileage and your contract price that you must pay for the fuel.

Q. And the contract price that year was increased by reason of the coal-strike?

A. Some, and then by reason of the contracts, also.

Q. And the operating expenses for this year (that is, for the year we are considering) so far as Minnesota is concerned, was abnormally increased because of that wreck to about the same extent as the operating expenses for the previous year?

A. Yes, sir.

Q. That is about $100,000 above the average?

A. Is that for Minnesota?

Q. Yes; it would be above $100,000 for the system.

A. I imagine a trifle less than $100,000 for the system for

the year ended April 30, 1908.

Q. But about $100,000 more than the normal for Minnesota in round numbers.

Mr. BUTLER: I don't think the average has been established for either, General Young. The figures were given for three years, 1906, 1905 and 1904.

Attorney General YOUNG: Well, if you dispute that being a fair average we will ask that you give us the expenditures for ten years.

Mr. BUTLER: We will give you that for a long period of years.

A. The charge for injuries to persons for the year ended April 30, 1908, is not over $92,000, as I figure it here.

Adjourned until Saturday, September 12th, at 10 A. M.

FEDERAL BUILDING, St. Paul, Minn., September 12, 1908, the hearing was resumed at 9:30 A. M.

LEMUEL G. SCOTT,
recalled for further cross-examination, testified:

By Attorney General YOUNG:

Q. It is true, Mr. Scott, that at least as to that item, the expenses of operation for the year referred to were abnormal?

A. They are.

Q. It is also true that, for all of the items, except increases in the wage schedule, the item of expense which increased your operating expenses for the year ended April 30, 1908, above the cost for the preceding year, were unusual in their character and not such expenses as occur annually?

A. Not on what you might say an average; they fluctuate.

The MASTER: You mean they are above the average?

WITNESS: No, sir, I wouldn't say that. They might be be-

low or they might be above. You are referring there particularly to the higher equipment, I suppose.

Q. Those items designated as being the ones which increased the operating expenses.

A. Well, it included ties and laying of track and some such items, that do not progress from day to day in the demand, but some years they may be a little more than the average, and so on; so it would appear to be necessary to take quite a period of time to get at an average, and then you would have to assume equality of conditions.

Q. Yes; I was going to ask that very question. In order to get at what would be called the average operating expenses upon your line, would it not be necessary to take the actual operating disbursements for a series of years and in that way reach a basis of what would be the probable average operating expenses per annum.

A. It ought to give about an average, considering the mileage of track operated.

Q. You can't make reliable deductions as to what will probably be the annual average of operating expenses in the future from an examination of the operating expenses for one or two years in the past?

A. Not for some of the expenses; you could not.

Q. Most of them?

A. Well, not all of them. Transportation and traffic ought to vary according to the business moving, but your maintenance of way expenditures would fluctuate from year to year according to the work done during the years.

Mr. BUTLER: And the prices of labor and material?

WITNESS: And the prices of labor and material.

Q. But if a period of five years were taken, and the total disbursements for those purposes during that period were divided by the number of years, you would come pretty near striking your average expense for those items, would you not?

A. I should think so.

Q. Where your road is extending, that is, where you are constantly adding to your mileage, in order to reach a safe basis for deductions it would also be necessary, in any tables covering a period of years, to give the cost per mile, would it not?

A. I was going to suggest that thing.

Q. You haven't anywhere in these tables furnished that evidence?

A. Not for a period of years, no.

Q. Now, I would like to ask if you know where we are going to get that testimony in this case. Do you propose to furnish it, so as to enable us to draw any reasonable deduction from your statistics upon this question of operating expenses?

A. I will be glad to furnish what will be needed in order to give you anything that will assist in getting at what you want.

Q. Will you just state to the Reporter what this statement you produce is intended to be, Exhibit H-4—Scott?

A. Exhibit H-4 is a statement of the locomotive, train and car-mileage, separated by staves, for the year ending April 30, 1907. In considering this statement in connection with Exhibit H-1, it should be borne in mind that, in apportioning the expenses for the different states than cannot be localized to any particular operating division or state, the mileage used was the mileage for each month. In other words, the expenditures of that nature for the month of May, 1906, as an illustration, were divided upon the basis of the mileage for the month of May, 1906, and so on throughout the entire year, including April, 1907; but the mileage as shown in Exhibit H-4 would average very closely to the mileage for the twelve months of that year, so far as the division among states is concerned.

By Mr. O'BRIEN:

Q. Ex. H-3—Scott is the formula which you used for the division between passenger and freight cost of such expenses within the state of Minnesota as were incapable of being charged direct to either of those services?

A. Yes, sir.

Q. Ex. H-4—Scott states the locomotive miles, freight-train miles and passenger-train miles, and the car mileage separately in the three states of Minnesota, Iowa and South Dakota?

A. For the full year ending April 30, 1907.

Q. Now, assuming that this is a fair average for the entire year, what formula would you use for the purpose of dividing the operating expenses between Minnesota, Iowa and South Dakota, the indirect operating expenses?

A. In answering that question I will direct your attention to Ex. H-3, which gives the formula. We ascertain first, the total revenue-train mileage; then the percentage that the revenue passenger is to the total, and the revenue freight to the same total; then we ascertain the revenue passenger-and freight-car mileage; then the percentage that the revenue-passenger-car mileage is to the total and the revenue-freight-car mileage to the total; then we add together the two percentages thus obtained for passenger and divide by two; then we add together the percentages thus obtained for freight and divide by two; the average percentages for passenger and freight are then added into the expenses that cannot be allotted direct to either passenger or freight, or that—

Q. Wait a moment. You say directly allotted to passenger or freight. You mean that cannot be allotted to one of the states?

A. No, we are speaking of a division between passenger and freight now, not between states. We are speaking now of the division between passenger and freight. Schedule H-2

is the schedule for the division between states; [continuing the answer interrupted]—or that are not arbitrarily allotted between passenger and freight upon the basis of experience.

Q. The first division which you make of the operating expenses of your road is the division between Minnesota, Dakota and Iowa, is it not?

A. Yes, sir.

Q. That is, before you divide your expenses between passenger and freight you first divide the expenses territorially?

A. Yes, sir.

Q. And in dividing them territorially, (that is, between the states) what formula do you use?

A. In answering that question, I will direct your attention to Exhibit H-2, which gives the different bases used for the various items of expenditures that cannot be territorially localized.

Q. And then the next division is between passenger and freight?

A. Yes, sir.

Q. The basis that is used for that division is the total train and car mileage?

A. The bases used, yes, sir, for only such items of expense that cannot be allotted direct—

Q. Oh, certainly, I understand that.

A. —to either service.

Q. In speaking of divisions I am only speaking of those that are not allotted directly.

A. Yes, sir.

Q. And the formula is given in Ex. H-3?

A. Yes, sir.

Q. And the actual mileage for the year ending April 30, 1907, is given in Ex. H-4?

A. Yes, sir.

Q. You spoke, a moment ago, of taking the total train miles in Minnesota and finding what percentage that was of the total; do you mean that you would take, for instance, (referring to Ex. H-4) total miles in Minnesota (561,860) and find that that is 60.89 per cent of 922,711, the total freight-train mileage upon the road?

A. That would be the first computation.

Q. You would do the same with the next group of figures, passenger-train mileage, getting the percentage of 61.74?

A. Excepting that we would not use those per cents at all.

Q. Oh, I understand that, but this is all on the assumption that you were using this table.

A. No, no.

Mr. BUTLER: This is to get the percentage, Mr. Scott, that Mr. O'Brien is asking.

WITNESS: No, you misunderstood me, Mr. O'Brien. We would use the mileage in determining the per cents, as per the formula Ex. H-3, but we don't use the per cents as indicated in Ex. H-4.

Q. I hand you Ex. H-4 and ask you, upon the assumption that that is a correct statement of the average train miles and car miles, in both passenger and freight traffic, for the year ending April 30, 1907, to explain how you would arrive at the percentage of the operating expenses in Minnesota to be charged, respectively, to passenger and freight traffic.

A. The passenger-train miles in Minnesota are 696,413; the freight-train miles in Minnesota are 561,860, the total being 1,258,273; the percentage of passenger-train miles to the total is 55.34, the percentage of freight to the total 44.66, the sum of the two making 100 per cent. The total passenger-car miles in Minnesota is 3,315,642, the freight-car miles in Minnesota are 14,574,189, the sum of the two being 17,889,831. The percentage of passenger-car miles to the total is 18.53, the percentage of freight-car miles to the total is 81.47, the sum of the

two per cents being 100. Add the passenger percentage of all train miles, 55.34, to the passenger percentage of all car miles, which is 18.53, making a total of 73.87; divide this percentage by two will give 37 per cent for passenger; add the percentage of freight-train miles to all train miles, 44.66 to the percentage of freight-car miles to all car miles, 81.47, giving a total of 126.13; this divided by two gives 63 per cent for freight; the percentage for passenger 37 per cent, and the percentage for freight, 63 per cent, making a total of 100 per cent. And in this connection, I will direct attention to the illustration given on Ex. H-3 (which is for one month) and to the fact that the percentages for the one month are identical to those for the year ended April 30, 1907, namely, passenger 37 per cent, freight 63 per cent. The adding of the per cents is for the reason that neither would be the best unit alone, and, further, that the units of expense per train mile and per car mile would be naturally quite different.

Attorney General YOUNG: In the freight and passenger business?

WITNESS: Well, either freight-car mile or freight-train mile. In other words, you could not add the train miles and the car miles together and get a per cent, because it would be like adding together horses and cows, because the expense per train mile and per car mile are so different in amont.

Q. Why would not the expenses which can be directly allotted, the total of each class of expense, be a fair basis upon which to divide the common expenses? Supposing, for instance, you allotted $100,000 to freight and $50,000 to passenger; why would not the percentages which could be obtained from those allotted expenses be a very fair basis upon which to divide the common expenses?

A. I have never given that any thought. I believe that the units that we have used would give a better basis for a separation.

By Attorney General YOUNG:

Q. Do you know whether that method of apportioning the indirect expense is used by any of the railroad companies; that is, the indirect expense apportioned or allotted in the same proportion as the direct expense?

A. I have never heard of that basis being used.

Q. Is not that a good deal the more logical basis?

A. I should not think so, because of really the difference in the two classes of service. If you take the actual use made of the property through the train and car miles, it seems to me that you have got a better basis or unit upon which to figure than if you take a money consideration, because of the extreme difference in the different classes of service.

Q. Well, in every field of productive industry, the same problem is met by the person who undertakes to apportion his cost of production,—a large number of items of cost are direct in their character, and a large number of items are indirect; there must be an apportionment of the indirect expenses in order that the producer may know at what price to sell his output; and isn't it true that, in most productive industries, the indirect expenses are apportioned on the same basis as the expenses which allot themselves?

A. That is a pretty broad question. I don't know enough about the manufacturing industries in common to know how they generally would do, but I should think that it would depend a great deal upon the local conditions within the particular industry or factory.

Q. Well, when you come down to the railroad business, it is not true, is it, that a freight-train mile and a passenger-train mile mean the same thing, either in wear and tear of the road or in cost of operating?

A. I have heard it claimed that there is very little difference between the two as to train miles, but I am not a judge as to that.

Q. Do you know?

A. No.

Q. You are no judge as to that?

A. No.

Q. A passenger train consists of about five cars, a freight train of about twenty-eight to thirty, on the average?

A. Yes, I have heard the speed considered, but as to the relationship as between the wear and tear through the speed of a passenger train compared with the longer freight train I don't know.

Q. The wear and tear to the track comes more from the wheelage than from the speed, does it not?

A. Well, I have heard it claimed that the speed has an effect, that it wears out your track quicker than if you run anything over it more slowly. That is, the speed and the vibration.

Q. Is there very much difference in speed between an ordinary passenger train and a through freight?

A. Oh, sure.

Q. Not a great deal?

A. Oh, yes.

Q. You run fast freights, don't you?

A. The speed between stations of the two trains,—the difference would be quite great.

Q. Of course, you are not an operating man.

A. No, but I have ridden on freight trains and I have ridden on passenger trains, and I know what the schedules are.

Q. Well, there is a great deal of difference in the speed between what is known as fast-freight trains and way-freight trains, and also between through freights and way freights?

A. I think that is determined principally on the number of stops that are made. A through freight train gains its time by continuing on its journey and cutting out the numerous stops,

and for that reason it reaches its destination in practically half the time.

Q. I want to ask you a few questions with reference to the apportionment of your operating expenses and the apportionment of your earnings to states. You have stated, Mr. Scott, that all expenses that can be localized are charged to the state where they are incurred, or, at least, where they arise, without reference to the character of the service in which they are employed. Now, in apportioning earnings that rule is not followed, is it?

A. Yes.

Q. Generally?

A. We credit Minnesota with the earnings on every shipment hauled within the state.

Q. Yes, but when you come to apportion your interstate earnings and assign to Minnesota the part which is credited to Minnesota, it is assigned on a mileage basis, isn't it?

A. According to the mileage and what our line revenue amounts to.

Q. Now, if a shipment originating on your road goes out of the state on your road, all of the terminal expenses and station expenses arising within the state are charged to the state as a part of the general expense of operation, while the earnings of that train are divided between this state and other states on the basis of the mileage; isn't that true?

A. With the exception of the arbitraries that we add because of the additional expense of the terminals.

Q. Well, I asked you the other day whether there were any arbitraries and you said you didn't know of any.

A. Oh, yes.

Q. In favor of Minnesota?

A. Yes, sir.

Q. On that proposition?

Mr. BUTLER: Mr. Tittemore testified that there were scores of them.

Q. Now, what do you mean by arbitraries in favor of the state on a shipment arising in the state and going out on your line—a shipment from Minneapolis to Watertown, South Dakota?

A. There would be no arbitrary on that.

Q. On a shipment from Minneapolis to Watertown, the terminal expenses at Minneapolis and all the station expenses in the state upon that service, would be charged to the state as a part of the state's operating expenses?

A. At this end, at the Minnesota end, yes, sir.

Q. Well, take the entire train going to Watertown, South Dakota, all of the station and terminal expenses in relation to that train that arise within the state would be apportioned to the state as a part of its operating expenses?

A. Yes, sir.

Q. The revenue from that train would be apportioned to the state according to the train mileage within the state, would it not?

A. Yes, sir; but the expense of that train at its terminal in Watertown would, of course, all be charged to South Dakota.

Q. Yes, but on that shipment there would be very much more in the nature of terminal and station expenses in Minnesota than in South Dakota, because of the greater length of line in this state?

Mr. BUTLER: You mean more per ton?

A. I was going to say that would depend upon the business handled at the two stations, that is, the relationship of any one particular shipment. The expense in connection with that shipment at Watertown on a percentage basis might be greater than it would be at Minneapolis.

Q. Well, now, let me ask, for information at that point, how you conduct your freight business on the branches of your road outside of the branch from Albert Lea to Minneapolis. Do you run any through freight trains on that western branch, what are known as through freight trains?

A. Yes, sir.

Q. From what points?

A. From Watertown, grain would come in in the through freight trains.

Q. And merchandise going out from Minneapolis—?

A. Would be in what is classed as a local train, way-freight.

Q. It would go as a way-freight all the way?

A. Yes, sir.

Q. There are no exclusively through trains carrying merchandise west on your line?

A. Merchandise for points in, say the region of Watertown and west, would probably be put in a through train.

Q. Do you have through trains outside of your stock and grain trains coming east? Do you have through freight trains on that branch of your road?

A. We have through freight trains going both ways.

Q. What I mean by a through train is a train that does not do local business.

A. Certainly.

Q. Do you mean to testify that you are doing such a large grain business at Watertown that you run through grain trains from Watertown to Minneapolis?

A. As the grain would accumulate we would run through trains, yes.

Q. Don't you pick up the grain and bring it down with your regular way-freight trains?

A. We would, some of it, between Watertown and here, yes.

Q. There is no considerable amount of wheat originates at Watertown, is there? You might run a through train as an extra?

A. Well, that would be the same thing.

Q. But what I want to get at is this, that the ordinary business of that portion of your road, except on the branch between Albert Lea and Minneapolis, is done by way-freight trains almost exclusively.

A. I wouldn't want to say that, because I am quite sure that they run a good many through freight trains both ways, but that could be determined from the actual records, if you desire it.

Q. That could be determined from the operating department, I suppose?

A. Yes, sir.

Q. Just a word on the matter of depreciation, about which you testified yesterday. You mentioned that one of the things that caused the increase of operating expenses for the year 1908 was the fact that the Interstate Commerce Commission, in its method of accounting, had recommended that you have a depreciation account,—

A. For equipment.

Q. —or that you keep, in a special fund, that proportion of the depreciation which, in your judgment, would be equal to the actual depreciation in equipment.

A. That is it.

Q. Now, that item is not a disbursement, that is a mere arbitrary segregation of that amount into a special fund, isn't it?

A. It is a disbursement in this way, that that fund will be used sooner or later; in fact, we are preparing to use it now.

Q. Yes, I know, but you don't mean you paid that money

out, you simply transferred it from one account to another; it was not an expense, it was a different method of bookkeeping?

A. We charge operating expenses and we credit that fund to liability account. Now, when we purchase new equipment we charge that liability account with the cost of new equipment to the extent of the fund.

Q. Yes, but your actual disbursement is the cost of the equipment and not the amount of money that is transferred to this account?

A. That is it.

Q. So that this creation of a reserve for depreciation is not a disbursement? We got a wrong impression of that I think—that it was somehow a depreciation of the finances of the Company; it is merely keeping a fund upon which you may draw for future renewals and betterments?

A. Yes, sir.

Q. That is all there is to it, and it is not a disbursement at all until the money is actually paid out, and when it is paid out, it is going to be charged up for renewals and betterments?

A. Yes, sir, but of course it represents—

Mr. BUTLER: It is simply a method of distributing, from month to month, the amount of money that is estimated it will take to cover wear and tear of equipment.

Q. It is ultimately intended to prevent the charging up of an abnormal amount of the cost of renewals and improvements in any one year?

A. Yes.

Q. So as to equalize it?

A. It is not, in any sense, a renewal or betterment item, nor can it be used for such. It is supposed to represent or cover the actual depreciation in your equipment from year to year

due to that equipment being used in the operation of the property. Therefore, they figure that it is an operating expense. It represents that portion of the equipment worn out in the service, and unless they get it in in that way it would be put in when the car was taken out of the service at the time it was dismantled or destroyed; then you would charge up the full value of that car. It is charged out in advance of the time that the car is destroyed or dismantled or taken out of the service.

Q. For the purpose of equalizing the cost of maintenance?

A. Exactly.

Q. Over a period?

A. Exactly; that is it.

Q. But in all cases where the money is not used in the year when it is charged up, it is still in the treasury?

A. Yes, sir.

Q. And if it is used, it appears in another item?

A. Yes, sir.

Adjourned until Tuesday morning, September 15th.

FEDERAL BUILDING, St. Paul, Minn., Tuesday morning, October 6, 1908, the hearing was resumed, having been continued from September 15th.

JAMES N. TITTEMORE,

recalled on behalf of Complainant, testified:

By Mr. BUTLER:

Q. Mr. Tittemore, as bearing upon the elements that enter into the making up of the average rate per ton per mile actually earned by the Company, or capable of being earned under any proposed rates, I desire to inquire somewhat concerning the movement of each class of traffic upon the line

of your Company during the period covered by the statistics included in the exhibits already in evidence; and, referring first, to the class or merchandise schedule, how many different rates were applied during the year covered by Ex. 16—Scott, which was from April 1, 1906, to March 31, 1907?

A. Twenty-two.

Q. Twenty-two different rates?

A. Different classes of rates.

Q. And each class took a different rate?

A. Took a different rate.

Q. Now, will you specify what those classes were and how designated in railroad language?

A. There are the First class, Second, Third, Fourth and Fifth class; there are classes A, B, C, D and E.

Q. Those make the ten principal classes?

A. The ten principal classes. Then, after that the sheet shows a number of other classes that are fixed (or differentiated, if you will,) from the first ten classes by the influence of the Western Classification.

Q. And how designated?

A. And they are designated as One-half A, One-half First class, One-and-a-half times First class, Two times First class, Two-and-a-half times First class, Three times First class, Three-and-one-half times First class, Four times First class, One-half of Second class, One-half of Third class, One-half of Fourth class and One-half of One-and-a-half of First class.

Q. Now, with respect to the amount of tonnage moving during the period referred to of each of the twenty-two classes or upon each of the twenty-two rates, was there the same amount of tonnage on each or a different amount on each?

A. It varies in each case.

Q. And, as to the rate, as I understand it, there were the twenty-two different rates?

A. Twenty-two different rates.

Q. And a different tonnage under each rate?

A. A different tonnage under each rate.

Q. And with respect to the average distance of each haul, was that the same or different as to each?

A. The haul of each class, of each commodity under each class of rates is different.

Q. That is, there are twenty-two different distances?

A. There are twenty-two different distances figured.

Q. Now, the rate, expressed in cents or tons per mile,—what was the highest rate for the average distance, expressed in terms of ton per mile, either cents or mills?

A. Four times First class would be the highest rate in the twenty-two classes mentioned in the statement.

Q. And what would be the rate per ton per mile?

A. It would be 40.92 cents.

Q. Per ton per mile?

A. Per ton per mile.

Q. Now, the lowest?

A. The lowest rate in the classes would be One-half of Class A, and the rate per ton per mile would be 1.92 cents.

Q. That is at the average haul?

A. At the average haul.

Q. And the average haul in that case was—

A. 80.61 miles.

Q. And the average haul for the highest rate per ton per mile? That is, Four times First class.

A. Would be 48½ miles.

Q. And the rates per ton per mile that you have just given us, are they the former rates or the present rates?

A. They are the former rates.

Q. That is, the rates that were in effect at the time of the Commission's order of September 6, 1906.

A. That is it.

Q. And the highest rate per ton per mile under the present rate, at the same average haul, would, of course, be Four times First class?

A. Yes, sir.

Q. Or 39.28 cents per ton per mile?

A. It would be 33.28.

Q. And the present lowest rate, One-half of A, at the same average haul would be—?

A. 1.47 cents per ton per mile.

Q. Have you caused to be prepared a statement showing the merchandise and carload tonnage and earnings, from Minnesota stations to Minnesota stations, moving at these various rates, from April 1, 1906, to March 31, 1907?

A. Yes.

Statement produced by witness marked "Complainant's Ex. 21—Tittemore."

Q. You have already given us the highest and the lowest former rate and the highest and lowest present rate; now, will you give us the highest and lowest number of ton miles against each rate?

A. The highest number of ton miles would be Fourth class, 932,801 ton miles, and the lowest would be One-half of one-and-a-half First class, or 190 ton miles.

Q. Now, will you give us the highest and the lowest average distance hauled?

A. Three times First class would be the highest average distance handled, or 111¾ miles; and the lowest average distance handled would be Class E, 37.43 miles.

Q. And the highest and lowest number of pounds moved?

A. The greatest amount of tonnage in pounds moved would be Fourth class, or 25,993,219 pounds, while the lowest would be One-half of one-and-a-half First class, or 3455 pounds.

Q. And the highest and lowest amount of loss on each class of the twenty-two subdivisions?

A. The highest amount of loss on any of the classes would be on Third class, the loss would be $8,571.68; and the lowest loss would be on One-half of one-and-a-half First class or $1.26.

Q. And the highest and lowest percentage of loss?

A. The highest percentage of loss would be Class C, which would be 29.33 per cent; and the lowest per cent of loss would be on Class A, or 11.70 per cent.

Q. Now, the paper marked Complainant's Ex. 21, then, is the statement to which you referred and which you have caused to be prepared?

A. Yes, sir.

Q. As you have testified?

A. Yes, sir.

Q. And it shows the twenty-two classes that you have referred to?

A. Yes, sir.

Q. And the rate per ton per mile of the average haul against each class?

A. Yes, sir.

Q. Both the present and former rates?

A. Yes, sir.

Q. The number of ton miles of each class?

A. Yes, sir.

Q. The average distance hauled of each class?

A. Yes, sir.

Q. The tonnage?

A. Yes, sir.

Q. The earnings under the two rates and the percentage of decrease?

A. Yes, sir.

Mr. BUTLER: It is offered in evidence, Complainant's Ex. 21—Tittemore.

Q. Now, with respect to freight other than that included in the merchandise schedule, so-called, does the amount of tonnage and the rate and average haul also vary in the traffic of your company?

A. It does.

Q. Now, with respect to the classes defined by Chapter 232 of the Laws of 1907, does the tonnage included in each class differ from the tonnage included in the others?

A. It does.

Q. The average haul?

A. It does.

Q. And, generally speaking, the rate?

A. It does.

Q. There are seven such classes. Are those new classes defined in the commodity schedule? They are not, I believe, subdivided as to rates in the manner that the merchandise rates are.

A. Well, they are not new commodities but new classes; that is, they denominate them differently.

Q. New classes?

A. Yes.

Q. And they are not yet in force?

A. No.

Q. They have been enjoined, so there is no subdivision of classes, with respect to rate-making, as there is under the Western Classification, with respect to the old ten conventional classes, is there?

A. That is true.

Q. Have you caused to be prepared a statement with respect to the gross tonnage or pounds of soft coal, hard coal, wheat and flour, lumber, coarse grain, flax and millet, cattle

and hogs handled between stations on your line during October, November and December, 1905, and February, March and April, 1906?

A. I have had such a statement prepared.

Q. Is this the statement, the paper marked Complainant's Ex. 21-A?

A. It is.

Q. Now, with respect to the paper Ex. 21-A, we would like, for the record, a little fuller explanation. Take the first subdivision of the statement under "Coarse Grain"; what does that show?

A. It shows the stations from which the grain was shipped, the destinations to which it went and the tonnage which moved, and *via* the lines and junction-points it moved. The tonnage is in pounds.

Q. That is to say, the statement shows the amount of coarse grain moving during the months stated in the caption of the statement, from Eden Prairie to Minneapolis,—?

A. That is it.

Q. From Chaska to Minneapolis—?

A. That is it.

Q. And so on from all Minnesota stations to Minneapolis?

A. Yes, sir.

Q. And then from the stations named to the other points; as, for instance, from Arlington to Milwaukee, Morton to Chicago, Echo to Chicago, and the like?

A. Yes, sir.

Q. And in the cases where the coarse grain moved from stations on your line to points off your line, as Chicago and Milwaukee, it shows the name of the other road or the connecting line hauling into the station off your line?

A. It does.

Q. Now, under the next subdivision is "Wheat and Flour." What does that show?

A. It shows the station from which the wheat was shipped, the destination to which it went, and the tonnage in pounds of wheat and flour shipped.

Q. That is, there is no distinction or subdivision between the pounds of wheat and the pounds of flour?

A. No.

Q. The figures include both?

A. Include both.

Q. And shows the number of pounds in the period covered from each station named to the city of Minneapolis?

A. Yes, sir.

Q. And with respect to flax, is it the same as with respect to wheat and flour?

A. It is exactly the same; it shows the stations from which the shipments go, the station or stations to which the shipments moved, and the tonnage in pounds of freight so moved.

Q. And with respect to lumber?

A. It gives the information—that is, it gives the station from which the lumber moved and the station to which it moved and the tonnage in pounds moved—the same information with relation to lumber that it does with relation to the other commodities preceding it.

Q. And the same with respect to cattle as wheat and flax?

A. The same, yes.

Q. Except South St. Paul is the market instead of Minneapolis?

A Yes, instead of Minneapolis.

Q. And hogs and sheep the same?

A. Hogs and sheep the same.

Q. Now, with respect to coal, hard and soft?

A. During the year ending—

Q. Yes, during the fiscal year ending June 30, 1906, how

many pounds of Minnesota intrastate soft coal were hauled?

A. We handled during the fiscal year ending June 30, 1906, on the M. & St. L. railroad 9,067,320 pounds of soft coal, intrastate.

Q. And the total tonnage of intrastate and interstate in Minnesota?

A. And the total intrastate and interstate tonnage of soft coal for the same time was 329,866,092 pounds.

Q. And with respect to hard coal, what was the comparison of the intrastate and the interstate during the same period?

A. It was 2,868,840 pounds of Minnesota intrastate shipments of hard coal, as compared with the total tonnage of 41,784,404 pounds of Minnesota intrastate and interstate.

Mr. BUTLER: Complainant's Ex. 21-A is offered in evidence.

Q. With respect to freight other than the freight which is referred to by the Ex. 21 and 21-A were there and are there other commodities which have not yet been classified?

A. That haven't been classified?

Q. Yes, by the Act.

A. I don't think so.

Q. Well, isn't it a fact that there was a lot of brick and such matter that is not included either in this statement Ex. 21 or 21-A?

A. Yes, that is true, so far as some commodities are concerned.

Q. They are not classified?

A. They are not classified.

Q And on what rates or schedules do they move?

A. Well, they move on a so-called commodity rate.

Q. Do you know about how many commodity rates, covering traffic not included in the rates prescribed by the Commission or those prescribed by the Act, either moved locally to

the state or moved in interstate commerce?

A. Well, I don't know of any commodity or class not covered by their order. Is that what you mean to ask me?

Q. Well, I understood you to say there were some that were not covered.

A. That were not included in this statement?

Q. Yes, not included in this statement. You mean Ex. 21?

A. 21, yes

Mr. DURMENT: 21-A.

WITNESS: 21-A. But when you come to the commodity statement,—I didn't understand your first question, I don't think.

Q. What I am trying to get at is this: Are there commodity-rates, stuff hauled on rates not in the Western Classification or defined by this Act on your road?

A. There are, yes.

Q. Now, I am trying to get to the extent and number of those, if you can tell.

A. I haven't a list of them. Brick is one, for instance.

Q. Now, with respect to the tonnage of each of those commodity rates not so included, does that vary, the length of haul vary and the rate vary?

A. It does.

Q. In a manner similar to the varying of the classes, the twenty-nine classes shown on these two exhibits 21 and 21-A?

A. It does, yes, sir. You see, Mr. Butler, in Ex. 21 and 21-A, soft coal, for instance, is not included except for the year ending June 30, 1906. It is included for instance, to that extent in Ex. 21-A.

Q. Well, it is referred to?

A. Yes, it is specifically referred to.

Q. I assumed that was included in that.

A. Yes, aside from brick I can't call to mind the other commodities, but they do vary.

Q. Where do hay and straw and the like of that go,—into the classes, or is that commodity-rate stuff?

A. In Minnesota, it is Class D, but still there are commodity rates covering the same classes of traffic between certain points.

Q. Take potatoes and rutabagas and turnips, etc.

A. Potatoes usually take the wheat rate. Sometimes they take the commodity rate. It is different in different states, and interstate is different from any state.

Q. On your line do they move on the class rate or the commodity rate?

A. Potatoes are Class C on our road in Minnesota; they would, therefore, be in these statements here.

Q. Now, is it practicable, Mr. Tittemore, in making a rate, or in determining what is or is not a reasonable or a compensatory rate, to determine that by ascertaining the rate per ton per mile that the tariff or the schedule will show?

A. I do not think that it is a fair way of getting at it; I do not think that it is of any value in determining the question.

Q. Why not?

A. Well, a reasonable rate to a shipper may not be a compensatory rate to a railroad company. We will take, for instance, soft coal; under the statute rate for seventy-five miles, it would pay 9.73 mills per ton per mile. On hard coal it would pay 11.9 mills per ton per mile. Class E would pay 13.7 mills, under the Commissioners' schedule. After you get the rate per ton per mile you have got to take the distance; you take the distance into consideration, you take the commodity into consideration, and the greater the distance the commodity is hauled, the less the rate per ton per mile. Take merchandise, you haul it 73.98 miles, as per Ex. 21-A. The average haul on soft coal in Minnesota during the period covered by Ex. 14

would be 110.2 miles, and under the Commissioners' schedule the average rate per ton per mile for 115 miles on soft coal is 7.39 mills per ton per mile, as against 9.73 mills per ton per mile for 75 miles. Hard coal in Minnesota was hauled 102.7 miles, and the rate per ton per mile for 105 miles is 9.96 mills, while for 75 miles the rate per ton per mile under the statute would be 11.9 mills. Coarse grain was hauled 124.3 miles; the Commissioners' rate per ton per mile for 125 miles is 11.7 mills, and for 75 miles it would be 16 mills. Now, take the First class, which is the highest tonnage, and then take Class E. Now, suppose the tonnage is equally distributed between the two classes,—

Q. The First class is the highest class?

A. The First class is the higher class and the Class E being the lower class. Take 40,000 tons of freight and distribute it equally between the two classes, twenty thousand tons of which would be class E, haul it an average of ten miles, and twenty-thousand tons was First class and would be hauled an average of 400 miles; the Class E rate for ten miles under the statute is 2.6 cents per hundred pounds; the total revenue, figured as I have suggested, would equal $10,400; the rate per ton per mile would be 51.9 mills. Now, the First class rate for 400 miles is 69.82 cents per hundred pounds; the total revenue for the 20,000 tons of First class freight, hauled 400 miles, would be $279,280, and the rate per ton per mile would be 34.9 mills per ton per mile. Now, in this case, for instance, it shows that Class E pays us a greater rate per ton per mile than the First class, but when we take distance into consideration we find that on the 20,000 tons of First class freight we would earn $279,280 as against $10,400 on class E. Your distance and class of traffic must always be taken into consideration in a rate-per-ton-per-mile proposition; and in that case it is clear that the longer the distance and the less the rate

per ton per mile the more valuable the traffic would be.

Q. Now, for example, I think the highest rate per ton per mile disclosed by this Ex. 21 is 40.923 cents; do you happen to remember what that includes, what takes that rate, what particular article?

A. Not without going to the classification.

Q. In Complainant's Ex. 21 the highest rate shown is 409.23 mills per ton per mile on Four times the First class at an average haul of 48½ miles; is there any way to compare that rate with the rate per ton per mile on soft coal for 400 miles as fixed by the Commission, which is 4.3 mills per ton per mile?

A. No way that I know of.

Q. Is there any way to tell which is the most profitable?

A. Not by a rate-per-ton-per-mile theory, and there is absolutely no way of telling the compensatoriness of that rate or the value of the rate to the Railroad Company, nor the reasonableness of it to a shipper.

Q. Now, upon the face of the exhibit itself (Complainant's Ex. 21) the rate varies from 19.22 mills per ton per mile, one-half of Class A, at a haul of 80.61 miles, to the highest rate, Four times the First class, 409.23 mills, at a haul of 48½ miles. Do you know of any value, in determining the reasonableness of a rate, there can be in comparing those two rates at those distances?

A. I do not.

Q. What are the elements that enter into determining the compensatoriness or reasonableness of a rate?

A. Well, it is a difficult question, and still it is answerable. As I have stated, the reasonablenes of a rate to a shipper may not be the measure of its compensatoriness to a railroad company. It would appear to me that, when an industry locates on a railroad, like, for instance, the mill at Fairfax, (that we

spoke of before) so long as you do not advance the rate agreed upon and upon which the industry is built, it would be a reasonable rate for the shipper; but supposing the rates all around in the state on the commodity manufactured by the mill at Fairfax are changed, it has an immediate effect upon the reasonableness of the rate so far as the shipper is concerned at Fairfax, and the reasonableness of the rate to the shipper might be a ruinously low rate to the transportation company. The mill at Fairfax, for instance, is and has a relation to the mill at some little point in Kansas or in Nebraska; so that I have never been able to determine the reasonableness of a rate for a shipper, because competition fixes the rate absolutely. I said that the rate might be made ruinously low to the railroad company; it might, and yet it might be necessary for the railroad company to keep the industry alive at Fairfax for some other reason. Now, when you come to the compensatoriness of the rate to the railroad company,—let us take an illustration of a car of flour from Fairfax going to Chicago; you can haul the car *via* Minneapolis and turn it over to a connection there, or you can haul it to Albert Lea, a distance of about 198 miles, as I remember it, and deliver it to the connecting line there for the same destination, at the same through rate. If you take one carload of flour and haul it in our Train 67 to Hopkins, turn it over to Train 94 and haul it to Albert Lea,—and that is the only car traveling from Fairfax to Albert Lea on the basis of 7.9 cents, as I remember it,—it is self-evident that we make no money out of it, it is self-evident that we haul it at a loss. (I want to be sure about the rate, because the rate used before was 8½ cents.) When I testified before on that point, we used a rate of 8½ cents. The question I think at that time was intended to relate to a rate of 7.4 cents or $1.48 a ton. Now, this carload of wheat traveling from Fairfax to Albert Lea would be on a

rate of 7.4 cents or $1.48 a ton. In the previous testimony I think we used 25 tons as an average carload of wheat or flour. At $1.48 per ton, the car would yield $37 as our proportion of the haul from Fairfax to Albert Lea, a distance of 178 miles. Now, you take that same carload with 26 other carloads of wheat or flour from mills or elevators around there, and handle it in Train No. 67 and No. 94 from Fairfax to Albert Lea when going to Chicago. 26 cars of freight, wheat or flour, at $1.48 per ton, with an average of 25 tons to the car, would yield the M. & St. L. Railroad Company $962. Now, there is a great difference between the one car and the 26 cars, in the value of the earnings to the Railroad Company; one may be compensatory, and *one* we know, self-evidently is not. And why can't we tell? We start the train from Fairfax, Train 67, one carload of freight, with 25 other cars; the Railroad Company can't determine, for instance, the amount of oil that would be used on the locomotives, the amount of coal that would be used on the locomotives, that would be chargeable to the one car from Fairfax or to the 25 cars from Fairfax, what part of the oil, for instance, used in the engine-gearing of Train No. 94 after the car leaves Hopkins to travel to Albert Lea, should be charged against the $37 earned on the one car from Fairfax to Albert Lea. I undertook to determine that question for myself,—what part of the waste that is used to pack the journals of the other 25 cars, for instance, in the train should be charged against the $37 earnings on the one car. It is just as essential to have the 25 cars in proper shape to get the one car to destination as it is to have the one car in proper shape to get the other 25 cars to destination, the safety of the train depends upon it. During the week that the train moves from Fairfax to Albert Lea a frog in the switch at Gibbon, this side of Morton, is changed, costs $26, what proportion of that $26 are you going to charge against the one car earning $37 from Fair-

fax? The train gets along to another station and there is a wreck; the car itself is not injured in any way, shape, or manner, (that is, the one car from Fairfax) there is damage to the other 25 cars amounting to $650; what proportion of that would I charge against the one car in determining the compensatoriness of a rate? The wreck requires the wrecking-crew to come from some point on the road over to Gaylord, we will say, where the wreck occurs; what proportion of that expense is to be charged, what proportion of the coal on the engine that carries the wrecker, what proportion of the enginemen's pay, will be charged against the car from Fairfax? How can you get a connection between the car from Fairfax and that car? And yet there is. In the mean time, the train requires telegraphic attention; you can't move the train over the road without you keep your operators keyed up and on time; your train dispatchers are there—the train moves on telegraphic orders—it is delayed: What proportion of that expense should the car from Fairfax contribute? There are so many elements that enter into the compensatoriness of a rate, and they are so intangible, so hard to get at, that, to me it is the most difficult proposition I have to contend with in the railroad business. To go back, for instance, we repaired locomotives last year or last March. Put repairs on them, for what pu[illegible]se? to be able to haul the wheat out of Minnesota and the Dakotas at *this* time. We didn't need the engines at that time, we didn't need the engines in the month of June or July nor in August; the repairs put on them in March must be chargeable to the traffic that moves in October, say, and November and December, and possibly next March. Now, how can you tell how much of that rate, how much of that expense, should be charged against each individual item of traffic or each car of traffic? I would rather say each kind of traffic because it is as difficult to ascertain the compensatoriness of a

rate when you have got a large tonnage as it is if you take an item like hats. For instance, to move a carload of hats from Minneapolis to Watertown. A carload of hats doesn't weigh very much and it would be hauled at less than carload rates. Take a carload of lumber at the same time; then take three carloads of flour back from Watertown going to Chicago *via* Albert Lea on a transit rate; I can't determine what part of the shop expense last March, should be charged against the business moving in this month of October, although a great deal of the work done last March is chargeable to the traffic now. How can I tell the compensatoriness of a rate or the value of the rate to the railroad company? I have never been able to do it. I don't think it can be done. There is the state haul as against the federal haul; how can that be determined? I am not able to determine it.

Q. Now, as I gather from what you have said, you have considered, generally speaking, two matters or matters which may be classified into two classes, to-wit, the value of the service to the shipper and the cost of the service to the carrier?

A. That is it.

Q. Speaking of the latter now, does the density of traffic, either measured by tons per mile of track or dollars earned per mile of track, affect the question of cost, and if so, in which direction, and how?

A. That is a primary element in determining the value of all transportation that a railroad sells, of course; for instance, the denser the traffic the easier it is to handle and the more valuable it is to a railroad company.

Q. So that if we assumed that other things were equal, the railroad company having the denser traffic would make the higher profit out of a rate, as compared with a railroad having the thinner traffic?

A. Yes, that is what I undertook to say by my Fairfax comparison.

Q. I think the figures are not yet formally introduced, but they have been reported from year to year to the Commission. As I remember the figure, used by you in your cross-examination, the freight earnings per mile of road on your line were about $2,500.

A. That was the figure used in my testimony, and I think was correct or nearly correct for the period given. I will say now that the freight train receipts per mile of road for the year ending June 30, 1908, on our road, is $2,541.94.

Q. Now, what is that? Is that a dense traffic or a thin traffic, as compared with other roads in this state?

A. That is very thin traffic, of course.

Q. Now, as affecting the cost, are the average tonnage per car, the average tonnage per train, the average mileage per car and the average mileage per train, elements that enter into the question of cost?

A. They are primary elements that enter into it.

Q. Can you illustrate that with respect to car tonnage?

A. Just what do you mean, Mr. Butler?

Q. Well, the lower classes usually carry the heavier tonnage.

A. The lower classes carry the heavier tonnage, and the higher classes the lighter tonnage.

Q. And with respect to through and local freight, which carries, as a rule, the higher tonnage and which the lower?

A. The through rate is usually higher.

Q. The car tonnage on a through haul or on a local haul, with respect to your line, do you know whether or not there is an advantage either way, in favor of each class of traffic, dividing on the line whether it is local or through?

A. I don't think there is any great difference in the tonnage in the cars; that is, if I understand the question right, take wheat, it is as heavy hauled locally; that is, the loads

are as heavy locally as through, and so with the higher classes.

Q. Would that be true with merchandise classes?

A. I think it would.

Q. With respect to traffic on your line, which business moves faster measured by car mileage per day or train mileage per day, the long-haul business or the short-haul business, the through business or the local business?

A. The long-haul, the through business.

Q. And is there a good deal of difference in that regard?

A. There is considerable.

Q. Varying according to conditions?

A. Yes.

Q. Is the direction of traffic an element that must be taken into account in determining the cost of the traffic? That is, the direction of the loaded as compared with the general direction of the empty movement?

A. Yes.

Q. How is that on your line?

A. Well, the conditions are bad on our line. That is, the ideal condition on a railroad is, of course, to be able to equalize your empty-car haulage with your through haulage. For instance, a line is built in a certain direction to take flour in that direction, say East; to congregate or assemble their empty cars to get the flour they must bring them westbound. One of the first problems I ever had to deal with was to make a rate on cedar posts and cedar lumber westbound that would give us loading for cars that were going eastbound with flour. That ideal condition never works out, and on our road it doesn't work out at all. The wheat, for instance, on our road west of Minneapolis, moves in from two to four months. Last year and the year before it took longer to move it than it is going to take this year, as it looks to us; the farmers this year have thrown the wheat on to us so that

we can't keep cars there fast enough to get it out of the elevators, and we are going to move it in probably sixty days. Now we are hauling trainloads of empties out to relieve the elevators; whereas, under ideal conditions we would expect to set those cars into our freight house, put in merchandise or other freight, and gradually take them out there. In other words, out of the wheat crop that we could handle that way in four months we would make very much more profit than we would where we have to handle it in sixty days and haul empties out there by the trainload.

Q. And as to the comparison between the cost to the Railroad Company of gathering up business from local terminals and hauling it to terminals, compared with the cost of hauling the same commodities between large terminals, as, for instance, the Twin Cities and Chicago, what do you say?

A. Well, it is very much more expensive.

Q. Which?

A. The local.

Q. Why?

A. Well, it takes twice as long to haul a train, (for instance, a local train,) to do local business from Minneapolis to Albert Lea, as it would to haul a train from Minneapolis to Albert Lea when the train was for Chicago. Now, in my previous testimony, I guess I gave as carefully as I could the conditions that surround our road particularly. We have a through-train schedule, and we may not always do a through business with them, we may be compelled to do a little local business switching I don't want to be understood to say that we have through trains that go right straight through to Albert Lea with freight for Chicago or south of there that do nothing north of there; we have Chicago through trains, but they do occasionally set out a car at some local point. As I testified, in one of our fast trains we would take a carload of merchandise from Minneapolis, set it out at Waseca for the

convenience of the Waseca merchant, if he wants it; it doesn't take very long to do it. But the record on our road is that our local freight trains—it requires about twice the time to get them over the road that it does our through freight trains, and I think that is true even when we let our through trains do some local work. I am looking into that question more carefully, and, so far, it proves out that statement.

Recess until 2 P. M.

AFTERNOON SESSION.

Q. Now, Mr. Tittemore, at the time that we took the recess for luncheon we were talking of the elements that enter into the cost to the carrier, and I think we had mentioned the density of the traffic, tonnage per car and train, mileage per car and train, the kind and volume of the traffic, the distance of the haul, and confined the inquiry, up to that time, to traffic on the whole line without regard to state boundaries. Do all of the elements of cost enter into the problem of making a reasonable local rate? and when I say local I mean intrastate.

A. All of the elements mentioned in the other case do enter into the making of an intrastate rate.

Q. And are there any other elements, or is there any other element?

A. Well, there is the other element—the one principal element—that it costs more to handle local business than it does through business; that is, the length of the haul with intrastate business would be shorter and the cars would be more apt, and are, on our road, loaded lighter than the general traffic, that is, the through traffic.

Q. And is the volume or amount of the local business compared to the whole an element to be taken into account in getting at the local reasonable rate?

A. It must be taken into account.

Q. Now, what elements are to be taken into account in get-

ting at the value of the service to the shipper; that is, the value of the service as between the carrier and the public?

A. Well, there are so many elements that it would sort of stagger me to begin to think them up. Take the commodity of coal, for instance, take hard coal. Hard coal is shipped from, say Duluth or Ashland, Manitowoc or Milwaukee to Fairfax on our road; it is a higher priced commodity, more valuable, in the first place, and is used for certain domestic purposes; the man of some wealth uses it in his fire-place; all of the people, perhaps, use it in their base-burners; a few of them use it in their cooking ranges, but it is a coal used for domestic purposes, almost exclusively so on our road; and the elements that would go into fixing the rate or the reasonableness of the rate or the value of the rate or the value of the service as represented by the rate on hard coal would be entirely different than it would be on the soft coal that would travel from Illinois, for instance, to Fairfax, to be used in the flouring mill there or any other manufacturing industry where large numbers or quite a few men were employed. Then, in that case, the value of the service to the shipper, so far as the railroad is concerned, competition would enter into the value of the service more than it would in the case of the hard coal, because if we do not keep our industry going there we destroy the function of the community, destroy the town, and the commodity that is manufactured or made there sells in the world's markets as against the same commodity made in some other western state. In the question of the coal rate to all manufacturing points the question of competition enters just as much as it does in the cost of the commodity; that is, the cost of the transportation, the rate of transportation, in other words. Now, there is an element in soft coal in determining the rate, determining the value of the service, that does not enter into the hard coal situation at all. Take hats and caps, shirts, or any other class of freight that comes under the first

five classes. A hat made in New Jersey will sell for $5 within two blocks of where it is made, it will be sold here in St. Paul over the counter for $5, you can go to San Francisco and buy the same hat for practically (and, I think, exactly) the same figure. Now, start a car of sugar off for another shipper, and you can see at once the difference in the value of the service to the shipper as determined by the railroad company or the traffic agent, the man who fixes the rates. I think that the rates on the first five classes of freight (and I will say on the 22 classes of freight as we have enumerated them in Ex. 21 today) are altogether too low; they never have, and they do not now, share the proper amount of the transportation burden; and I say that because that shows that my idea of the value of the service to the shipper—it is hard to determine it—but the elements are there, it is a question of using your judgment with those elements to determine the fact.

Q. Then are we to understand that it is your view that all commercial conditions of competition as between carriers, between producers and between dealers, enter into the problem of determining the value of the service rendered by the carrier to the shipper?

A. Yes, sir; that is what I mean to say.

Mr. BUTLER: For the convenience of the Master and the parties we have undertaken to make and print a statement showing the class rates prescribed in the order of the Commission of September 6, 1906, and the rate per ton per mile allowed in each rate, and extended the tariff by computation from 500 miles, the highest distance named in the order, to 660 miles, by adding the lowest rate per ton per mile allowed for additional distance under each class. These figures enter into the basis of some exhibits that we expect to offer in evidence, and I will, if it is desired, offer this in evidence or furnish the Master and counsel copies of it. It is a mere matter of computation from the face of the tariff itself, for convenience

in examination of witnesses, and will be convenient in all the cases; and if it is not necessary to encumber the record with them I will not offer them, but they may be used by the parties to refer to as a table—corresponding somewhat to a table of logarithms for an engineer.

The MASTER: Hadn't it better be put in evidence?

Mr. BUTLER: Very well. I don't know that I can verify it by the oath of the man that figured it, but if there are any errors in it they will probably be detected. We think they are right, and if they are not, we will substitute those that are right, for it involved a good deal of figuring.

WITNESS: And very careful figuring, too.

Mr. O'BRIEN: I want to note a criticism on this table as explained by counsel, and probably better do it now so as to have it in the mind of the Master. This table is extended for 660 miles. That would necessarily take the rates to points outside of Minnesota, and we claim, of course, that the irregularities with reference to the extension of the rates beyond the lines of Minnesota are entirely immaterial and form no proper basis for any calculation.

The MASTER: With the explanations which counsel have made, the exhibit may be received in evidence for the purpose suggested.

The two exhibits were marked Complainant's Ex. 22 and Complainant's 22-A—Tittemore.

Mr. BUTLER: Now, I want to explain the manner of building up the class rates made by the Commission in its order. After designating the ten classes they establish a relation on the basis of percentage between the classes, the First being 100 per cent, the Second 83 1-3, the Third 66 2-3, the Fourth 50, the Fifth, 40; A, 45, B, 35, C, 30, D, 25 and E, 20. The percentages are not indicated on the exhibit.

The MASTER: They are indicated in the order?

Mr. BUTLER: They are indicated in the order but not on

the exhibit yes, sir, that is right. Those I just stated I read from the order. Your Honor will notice that at the left, under the distance column, the first distance is five miles, the next is ten, and so on by additions of five until you get to 200 miles. The next is 210, 220, and so on by additions of ten miles until you get to 400 miles. From 400 the next distance shown in the order of the Commission, as well as in the exhibit, is 420, 440, and so on by twenties, until 500 miles is indicated. 500 is the greatest distance indicated in the schedule fixed by the Commission. As indicated in the caption of the exhibit, the exhibit undertakes to extend the schedule by adding, with the increase of distance, the lowest rate per ton per mile allowed for additional distances under each class; that is to say, the schedule evidenced by the exhibit adds for distances above 500 miles the same amount per ton per mile under each class as was added by the Commission for each mile between 400 and 500 in its order.

The MASTER: 520 and 540, just the same as 420 and 440?

Mr. BUTLER: Yes, sir. Now, if your Honor will observe the First class, the rate per hundred pounds for 5 miles is 12 cents, for ten miles is 12.98, for 15 miles 13.96, for 20 miles 14.94, and so on; the amount per hundred pounds being added for each five miles in the First class is .98 of a cent for the five miles. If you will now go down to 200 miles you will find that the addition for the distance from 200 to 210 miles is as follows: The rate is 50.22 cents for 200 miles; 51.20 for 210 miles, being an addition of .98 of one cent per hundred pounds for ten miles hauled. In other words, it is just half as much as it would be for a haul for ten miles at any point before the 200 miles was reached. Now, if you will go down to 400 miles, you will observe that the rate on First class at 400 miles is 69.82 cents per hundred pounds; First class at 420 miles it is 70.80, being an addition of .98 of one cent per hundred pounds First class for a haul of 20 miles, half as much as like distance

between 200 and 400 and one-fourth as much as like distance between zero and 200. From 500 miles on, according to Ex. 22, the addition is constant, .98 of one cent per hundred pounds. First class, for each twenty miles, just the same addition as was allowed after the 400 miles. An examination of the other nine classes will show that the same method, precisely, is followed, on the basis of the percentages which I have read, to-wit, the Second class addition for each additional haul would be 83 per cent of that in First; the Third would be 66, and so on. An examination of Ex. 22-A will disclose that it is made, generally speaking, upon the same principle as is the merchandise schedule as ordered by the Commission; the relation of rates under each class is not indicated by percentages and there does not appear to be the same regularity, but the rate in each instance is built up by first taking the amount allowed for the first five miles, which, by the way, is a good deal more, of course, than there is allowed for any other five miles, it being the exception that two terminal services would be paid for in the first five-mile rate, I take it; and then the schedule is built by a certain addition for each five miles hauled under each class until a certain distance is reached. I think (and if I don't state this right, help me,) that the distance where the lower addition is made for each mile of additional haul varies under each class, but is somewhat beyond 100 miles and, perhaps, roughly speaking, in the neighborhood of 200 miles, where the amount of addition divides as it does in the merchandise rate; in other words, it is the same principle, but the steps are not uniform. In the merchandise schedule, if you have one figure, and its location on the table and the rule, you can build the schedule; you could not do that with the commodities. Now, the distance indicated on this exhibit is 660 miles; the highest distance indicated in the act is 400 miles. It is the aim of this exhibit to extend the rate to greater distances and that is done in the same manner that I

explained with reference to the other exhibit, to-wit, by adding to the last rate shown in the act the same addition per mile of haul as was last added by the legislature in making the schedule. Now, just one word further in reference to Mr. O'Brien's objection,—not to invite a ruling, but that the position may be seen. Your Honor will recall that, during the examination of Mr. Tittemore, comparisons were made between the earnings of this Company on a local haul directly affected by the rate and upon interstate hauls of a like class of freight or like commodity; coal and grain were very frequently spoken of; the distance that the shipment moved upon the line of this Company was disclosed; its division-sheets examined and the amount allowed for the haul in question. That distance hauled by the Company and the amount allowed by the division-sheets was compared with the allowance in these tariff-sheets for the first straight-away haul, which, of course, includes both terminals. Now, by the further examination of the witness it is the purpose to enlarge upon that comparison and show how the earnings it actually received would compare not only with the first straight-away haul indicated by the top of the schedule, but how it would compare with the end haul, take into account the full distance that interstate shipment moved and see how the rates actually earned would compare with the rates allowed by this act and this order if extended on the principle upon which they are made to the distance that the traffic actually moved.

Mr. O'BRIEN: Now, it might be proper for us to say that we desire to make an objection to testimony of the character indicated, upon the ground that it is immaterial and is no fair method of comparison. The reason we say that is this, (so that our position in the matter will be understood,) that if a schedule of rates is being prepared for a territory in which the longest possible haul will be 400 miles, of necessity the rate will drop more rapidly than would a rate which was pre-

pared for a distance of 1,000 miles or 2,000 miles; that, in other words, the large terminal charge which is permitted by these rates is only spread over a distance of 400 miles; consequently the amount added for the last 100 miles of the haul or the last 200 miles of the haul is proportionately less than if these terminal charges were to be spread over a haul of 600 miles or 700 miles or 2,000 miles; and that in this case, as well as in all the other cases, the attempt to arbitrarily extend these rates by adding, after a certain distance is reached, 200 or 300 or 400 miles, only the additional charge for a haul of five or ten miles which is allowed in these rates is not fair, nor does it constitute a fair comparison as between the rates; that these rates must be judged of with reference to the traffic to which they apply and cannot be applied to the traffic of another character involving a longer haul, nor can the sufficiency or propriety of these rates be determined by simply extending one portion of them for an imaginary longer haul. But that has been one of the contentions in these cases from the beginning, and while we don't expect the Master to rule upon it, we simply want to point out the different view-points.

Mr. BUTLER: It was made especially appropriate, if not indeed necessary, to make such an examination as I am about to make of this witness, by reason of the character of the cross-examination. Your Honor will remember, for example, that interstate coal coming into Minnesota, moving over the lines of two or several connecting carriers, moved from point of origination to point of destination a greater distance than that allowed by the schedule. In the cross-examination, having ascertained the distance at the end of the haul that the Minneapolis & St. Louis road moved the traffic, comparisons were then made between the amount it received on its division and the amount allowed for the first equal distance on the St. Louis. Now, we hope to be able to examine this witness to show what the rate would have been for the whole distance

that the coal and other commodities actually moved if the Commission were making it or the legislature made it upon the same principle that they built up as far as they did go, and then to compare the amount received with the amount that they would have received for the corresponding end-haul under the tariff, and also for the corresponding first haul. The thought that came to me during the cross-examination was that the attempt was to show that this Company was impoverished (as indeed it appears to be impoverished) by reason of its low interstate rates. Now, we want to get as near as we can (and that is what I am promising to do) a comparison of one with the other, all things being considered, or as many things being considered as it is possible to bring into the problem.

Mr. O'BRIEN: That is exactly the objection that we have to this and the fallacy in the argument that we want to point out to the Master now. The whole fallacy of the argument is that, in the first place, they conjure up an imaginary condition of things—

Mr. BUTLER: We will show a concrete condition of things by this testimony, Mr. O'Brien, there will be no imagination about it.

Mr. O'BRIEN: —in which they apply these rates to another form of traffic. Now, in our cross-examination we show that the Minneapolis & St. Louis road received coal at Albert Lea and hauled it from Albert Lea to Minneapolis at a certain rate. The fact that that coal had been brought from the Illinois coal-fields over other lines of road I imagine to be entirely immaterial, because the question to be determined is, What did it cost the Minneapolis & St. Louis road to haul that coal from Albert Lea to Minneapolis and what profit did it make on it? If they took the coal at Minneapolis and hauled it to Albert Lea under this schedule, the question will be, What did it cost to furnish that service and what would be

the profit under it? and we then would have an opportunity of comparing the earnings of the Minneapolis & St. Louis allowed under the schedule as it actually was and under the actual conditions that they hauled the coal from Illinois, that is, the latter part of the haul; but to take the rate which is actually allowed and which would actually be in force and then extend that to a greater distance and ascertain what would be the price that the Illinois Central would receive or some other road if this rate was applied to an imaginary condition of things, can be of no benefit; so that the question comes down in this case eventually to what it costs them to perform the service they do perform and what the revenue is from it; and that is the testimony that has not yet been produced and the testimony, apparently, that will not be produced.

Mr. BUTLER: Don't worry about that.

Mr. O'BRIEN: But this attempt to extend this schedule to another condition of things proves nothing, because it cannot be, is not claimed to be, and never will be, applied to any other condition of things except the haul in Minnesota, and since they have already shown that the longest average haul on any of the commodities, (as they did in Ex. 21 this morning,) or upon any merchandise haul on intrastate business on this road was 111 miles and a fraction, it is entirely immaterial what this rate would allow upon a haul of 600 miles, to which it never can be applied.

Mr. BUTLER: For hauling soft coal 100 miles, between the distance of 300 miles and 400 miles, this schedule, with the coal moved 400 miles, would give the hauler for the last 100 miles 18 cents. We were criticised when Mr. Tittemore was being cross-examined for a rate much more than double that in interstate, and we were on no fictitious mileage, we were on the mileage on which the product moves—and similar conditions affecting grain.

Mr. O'BRIEN: Mr. Butler, do you think that a fair statement?

Mr. BUTLER: Not only fair, but days were spent in the cross-examination of Mr. Tittemore to compare the division for the last haul of four or five hundred miles with what they allowed for the first equal distance.

Mr. O'BRIEN: It was the entire haul on the Minneapolis & St. Louis, wasn't it, their entire earnings?

Mr. BUTLER: Yes, but anybody that stops to reflect will reach the conclusion that if two lines connecting reach two distant points and there is one line reaching between them, the rate that the two will get and have to divide will be the same as the one carries it at or has to; no matter if there are a dozen links in the chain they will have to meet the continuous-line haul,—and we will speak of that before we get through.

Mr. O'BRIEN: Well, when you take the last haul of 100 miles and say that there is only allowed 18 cents or 18 mills, or whatever you said, for carrying it, do you not eliminate the terminal charges absolutely?

Mr. BUTLER: Well, I assume a factor there, if any terminal charges are allowed.

Mr. O'BRIEN: Is there such a thing as a haul which does not begin anywhere and does not end anywhere except in your imaginary 100 miles?

Mr. BUTLER: If you will look at the schedules you will wonder where the allowance for terminals comes in.

Mr. O'BRIEN: Will you give us the rate per ton per mile for that haul of 300 or 200 miles and state the facts to the Master instead of stating a segregated haul of 100 miles?

Mr. BUTLER: Certainly, we will state just where the traffic moved,—

Mr. O'BRIEN: And compare that.

Mr. BUTLER: Just what we get and what the other fellow gets and just what they give us.

Mr. O'BRIEN: Compare that with your Minneapolis & St. Louis haulage to Albert Lea on soft coal?

Mr. BUTLER: We will.

Mr. O'BRIEN: Do it now, because it is just what you have stated. You have stated that there was allowed 18 cents. I claim there is no such thing in either the Commission's orders or in the commodity act as an allowance of so much for the last 100-mile haul, and that while that statement is not made wilfully it is not a correct statement; that the entire haul, including the terminal charge, has got to be included in every case, just as the $3 per car that the Minneapolis & St. Louis was given as a terminal charge on their interstate haul was included in the entire rate which they got from Albert Lea to Minneapolis, and that when they assume to charge so much for a last 100-mile haul they are eliminating the terminal charge and not making a correct statement of the rates.

Mr. BUTLER: On any theory that they want,—say both terminal hauls are in the first five-mile item, if you like—these schedules require a ton of coal to be hauled 100 miles for 18 cents, up the hills and down the hills, for 100 miles; or 100 tons of coal for one mile for 18 cents.

Mr. O'BRIEN: We claim that there is no such condition of things,—

Mr. BUTLER: That is the truth.

Mr. O'BRIEN:—and that the schedules themselves demonstrate that it cannot be figured in that way; because in doing that they eliminate the large allowance that is made for the two terminals at the first part of the schedule.

Q. A paper marked "Complainant's Ex. 23," the caption of which is as follows, is shown to the witness: "Statement of Through Rates, M. & St. L. R. R. Revenue and Rates Per Ton

Per Mile on Wheat, Flour and Coarse Grain from M. & St. L. R. R. Minnesota Stations to Chicago, Compared with Statute Rates and Rates Per Ton Per Mile Under Act 232 for Similar Distance." Calling your attention to Ex. 23, that, as I understand it, relates to wheat, flour and coarse grain from stations on your line in Minnesota to Chicago *via* various junction-points?

A. Yes, sir.

Q. And those junction-points are what?

A. Albert Lea, Minnesota Transfer and Estherville.

Q. Now, the distance from Albert Lea to Chicago *via* Illinois Central?

A. The distance from Albert Lea to Chicago *via* Illinois Central is 382 miles; from Minnesota Transfer to Chicago *via* the Chicago, Milwaukee & St. Paul railway, 415 miles; and from Estherville Iowa, to Chicago *via* the Chicago, Rock Island & Pacific railway, 464 miles.

Q. Now, column 1, of that statement, as I read it, indicates the stations on your line in Minnesota from which the commodities named in the caption moved?

A. Yes, sir.

Q. And 2 indicates Chicago?

A. The destination Chicago, yes, sir.

Q. 3 the names of the commodities?

A. Yes, sir.

Q. 4 the distance by the various junction-points?

A. Yes, sir.

Q. As for example, the distance from Manchester to Chicago *via* Albert Lea would be 389 miles?

A. Yes, sir.

Q. And if the shipment moved by the Minnesota Transfer it would be 519 miles?

A. Yes, sir.

Q. And take Madison, for example, the distance *via* Albert

Lea would be 643 miles to Chicago?

A. Yes, sir.

Q. *Via* the Transfer 589 miles?

A. Yes, sir.

Q. And column 5 is a double-column, the first half of which, as I understand, indicates the rate actually received for transportation from the stations named to Chicago at the times covered by Ex. 14?

A. Yes, sir, actual rates.

Q. And the other half of 5 shows the rate per ton per mile allowed?

A. Yes, sir.

Q. Column 6 is also double and shows the rates computed on the statutory basis extended as they are in Ex. 22-A to the distances named where such extension is necessary?

A. Yes, sir.

Q. And the other half under column 6 shows the rate per ton per mile on such statutory basis?

A. Yes, sir.

Q. And column 7 shows, as I understand it, the distance that the particular shipment would move *via* either junction on your line?

A. Yes, sir.

Q. And column 8 is a double-column, the first half of which indicates what your Company would receive in cents per hundred pounds?

A. As its proportion of the rate shown in column 5.

Q. According to the condition of things actually in force at the time in question?

A. Yes, sir.

Q. And the other half of the column would indicate the rates per ton per mile which you would actually receive on such conditions of things?

A. Yes, sir.

Q. Column 9 is a double-column which shows the actual rates allowed by the statute for the distance that the shipment moved over your line in cents per hundred pounds and the rate per ton per mile, expressed in mills.

A. Yes, sir.

Mr. BUTLER: It is offered in evidence.

Q. Now, in order that we may the more clearly understand the method of comparison followed in this exhibit, let us take a shipment of wheat originating at Manchester in Minnesota. As I understand this exhibit, the distance *via* Albert Lea would be 389 miles if the shipment moved down to Albert Lea on your line and then on the Illinois Central line to Chicago?

A. Yes, sir.

Q. If it moved to the Minnesota Transfer and thence by the Chicago, Milwaukee & St. Paul road to Chicago, it would be 519 miles?

A. Yes, sir.

Q. The rate allowed in either instance (that is, the rate earned and which was in effect in either instance) would be 15 cents per hundred pounds?

A. Yes, sir.

Q. Reduced to the rate per ton per mile, if it went by Albert Lea, it would be 7.7 mills per ton per mile?

A. Yes, sir.

Q. If it went by the junction which produced the greater distance, it would be 5.8 mills per ton per mile?

A. Yes, sir.

Q. The statute rate for 389 miles (the distance *via* Albert Lea) would be 11.9 cents per hundred pounds.

A. Yes, sir.

Q. Or 6.1 mills per ton per mile?

A. Yes, sir.

Q. As compared with the 7.7 on the interstate rate *via* Albert Lea?

A. Yes, sir.

Q. And on the Minnesota statute basis for a haul of 519 miles would be 12.7 cents per hundred pounds?

A. Yes, sir.

Q. Or 5 mills per ton per mile?

A. Yes, sir.

Q. Now, the distance that that shipment would move on your line if it went by Albert Lea would be 7 miles?

A. Yes, sir.

Q. And your company under the division arrangements in force at the times in question would receive 7½ cents per hundred pounds for moving it seven miles?

A. Yes, sir.

Q. Reduced to mills per ton per mile would be 214.3 mills per ton per mile, which you would actually receive on that wheat?

A. Yes, sir.

Q. If it went by the Minnesota Transfer, you would haul it 104 miles on your road?

A. Yes, sir.

Q. And receive 7½ cents, the same as you would receive for the 7-mile haul?

A. Yes, sir.

Q. And earn 14.4 mills per ton per mile for the haul?

A. Yes, sir.

Q. Now, comparing your division with the amounts allowed by the statute for these two distances, to-wit, 7 by Albert Lea and 104 by the Minnesota Transfer, as I understand this exhibit, in the first instance you would receive 3.3 cents per hundred pounds?

A. Yes, sir.

Q. Compared with the 7½ which you did receive?

A. Yes, sir.

Q. Or 94.3 mills per ton per mile compared with the 214.3 mills per ton per mile which you did receive?

A. Yes, sir.

Q. Or, if it went by the Minnesota Transfer you would receive, on the statute basis, 7.9 cents per hundred pounds?

A. Yes, sir.

Q. Against 7½ which you did receive?

A. Yes, sir.

Q. And 15.2 mills against the 14.4 mills per ton per mile which you did receive?

A. Yes, sir.

Q. Now, the distances indicated in column 7 of the exhibit are all distances which are included in the commodity act, Chapter 232; they are all under 300 miles?

A. All under 300 miles.

Q. But the distances indicated in column 4 are in some, and indeed apparently in most, instances greater than 400 miles?

A. Yes.

Q. And 400 is the maximum specified in the act?

A. In the act.

Q. Now, without taking time to go down through, can you state briefly what this exhibit shows by way of comparison on the basis that it is made?

A. Ex. 23 shows first that the through rates or the tariff rates actually used and in force when the shipments moved exceed the statute rates or the rates fixed by Statute 232 for similar distances *via* all junctions. The actual rates exceed the statute rates in every case.

Q. That is, when you say the statute rates you mean the statute rates extended on the principle of Ex. 22-A?

A. On the principle of the extension fixed by Ex. 22-A, yes, sir.

Q. Where such extension is necessary?

A. Yes, sir.

Q. Go on.

A. Now, take wheat *via* Albert Lea or *via* Estherville, the through rate (and when I speak of through rate I mean the rate as per tariff and actually applied to the traffic) is from 2.6 cents per hundred weight at Chaska to 6 cents per hundred weight at Sherburne in excess of the statute rate. On wheat *via* Minnesota Transfer, the through rate or rate actually applied to the traffic, ranges from 2.3 cents at Manchester to 5.7 cents at Sherburne in excess of the statute rate; on coarse grain *via* Albert Lea the through rate ranges from 4 cents at Chaska to 6.9 cents at Sherburne higher than the statute rate. On coarse grain *via* Minnesota Transfer it ranges from 2.8 cents at Manchester to 6.6 cents at Sherburne higher than the statute rate. Second, Ex. 23 shows that the M. & St. L. proportion on coarse grain *via* all junctions is in excess of the statute allowance for similar distances, the difference ranging *via* Minnesota Transfer from five-tenths of a cent at Manchester to 3.3 cents at St. James, and *via* Albert Lea or Estherville from 4.2 cents at Manchester to 6.7 cents at Sherburne. The Minneapolis & St. Louis proportion on wheat is in all cases in excess of the statute allowance for similar distances, except that at Arlington and at Fairfax, when shipments are routed *via* Albert Lea, the statute allowance is 1.1 cents greater, and at Manchester 4.1 cents greater than the M. & St. L. proportion. At all other points the M. & St. L. proportion (the actual proportion received, that is,) exceeds the statute allowance on shipments *via* Albert Lea by from 1.1 cents at Hanley Falls to 4.2 cents at Manchester and 6.6 cents at Sherburne; on shipments routed by Minnesota Transfer from 5.1 cents at Montgomery to 2.8 cents at St. James. In compiling Ex. 23 we have used the actual distances that the shipments would travel, while short dis-

tances, in a number of cases, would figure a lower statute rate; for instance, the short line to Chaska from Chicago would be 437 miles by the C. M. & St. P., as against 441 as used *via* Minnesota Transfer.

Q. That is, you used the longer distance?

A. I used the actual distance; whereas, rates usually are computed on the shorter distance; but we have used the actual distance, and the actual distance in every case is longer than the short distance *via* some other line than the Minneapolis & St. Louis.

Q. And that would give the rate on the statute basis higher than could be figured on the shorter distance?

A. That is it. At Waseca, for instance, the short line from Chicago is 393 miles *via* the Chicago & Northwestern as against 494 miles used *via* the Minnesota Transfer, and 412 miles *via* Albert Lea; and these greater distances *via* Minnesota Transfer and *via* Albert Lea are the distances used in making the computations in these tables because they are the distances that the shipments actually travel. At New Ulm, for instance, the short distance *via* the Chicago & Northwestern road from Chicago is 448 miles as against 533 miles *via* Estherville and 506 miles *via* Minnesota Transfer. At St. James the short line is 457 miles *via* the Northwestern system as against 507 miles *via* Estherville and 533 miles *via* Minnesota Transfer, and at Sherburne the short distance from Chicago *via* the Chicago, Milwaukee & St. Paul road is 447 miles as against 482 miles *via* Estherville and 557 miles *via* Minnesota Transfer.

Q. Now, it may perhaps aid the Master in making the comparisons by a glance to call attention to the form of the question: As I understand it, the figures in the first half of double-column 5 are to be compared with the figures in the first half of double-column 6; am I right?

A. Yes, sir.

Q. The figures in the last half of 5 with the figures in the last half of 6?

A. Yes.

Q. And in like manner are double-columns 8 and 9 to be compared, the first half of 8 with the first half of 9, and the last half of 8 with the last half of 9?

A. That was the idea of the sheet.

Q. I call your attention to Complainant's Ex. 24, captioned "Statement Showing Through Rates M. & St. L. R. R., Revenue and Rates per ton per mile on Hard and Soft Coal from Milwaukee, Wisconsin, Peoria, Illinois, etc., to Minneapolis & St. Louis Railroad Stations in Minnesota Compared with Statute Rates and Rates Per Ton Per Mile under Act 232 for Similar Distances *via* Various Junctions." Now, the phrase "Statute rates" as used in that caption are those allowed by Chapter 232 if the distance be within the 400 miles there stated, or extended as we did extend it in Ex. 22-A if the distances are greater than 400 miles?

A. That is it, yes, sir.

Q. Now, the junctions in question I think appear at the foot, do they?

A. No, column 3.

Q. Well, the distances appear?

A. Yes, the distances.

Q. Then as I understand it, column 1 of this exhibit indicates the station in Minnesota on your line to which the shipment moves?

A. Yes, sir.

Q. Column 2 indicates the coal point in some other state from which the coal moves?

A. Yes, sir.

Q. And column 3 indicates the route as far as your junction-point is concerned?

A. Yes, sir; the station *via* which the shipment came to us;

and it shows the road, the connecting line from which the shipment came.

Q. Now, at that point, would it not be well to call attention to the statement at the foot of the exhibit with respect to the distances?

A. I think it would, because the distances are next considered.

Q. Will you explain the note?

A. The through distances—

Q. Indicated in column 5.

A. —indicated in column 5, are arrived at by using the Minneapolis & St. Louis railroad distance from its junction-points to the destination, and the connecting line distances up to the junction-points at which the shipments came to us from the connecting line. Take shipments from the Wisconsin Central Railway *via* Minnesota Transfer as shown in note second at the bottom of the page, shipments from the Wisconsin Central Railway, the distance from Manitowoc to Minnesota Transfer would be 325 miles; the Burlington (the C. B. & Q. railroad) distance would be 448 from Peoria to the Minnesota Transfer. Then take shipments coming to us from the Illinois Central or Iowa Central or C. M. & St. P. Company at Albert Lea, the Iowa Central railway distance, for instance, from Peoria to Albert Lea, would be 371 miles; the Illinois Central railway distance, for instance, from La Salle, Illinois, would be 350 miles; the Milwaukee distance from Milwaukee, Wisconsin, would be 317 miles. Take shipments coming to us from the Illinois Central at Storm Lake, Iowa; the Illinois Central railroad distance would be 394 miles from La Salle, Illinois; shipments coming to us from the Northwestern at Sioux Rapids, Iowa, the distance would be 506 miles from Milwaukee; to Spencer, Iowa, the distance *via* C. M. & St. P. road from Milwaukee, Wisconsin, is 397 miles.

Q. In column 4 is indicated the commodity; that is,

whether is it hard coal or soft coal?

A. Yes, sir.

Q. Column 5 indicates the distance *via* the junctions mentioned in column 3 from the points mentioned in column 2 to the stations named in column 1?

A. That is it.

Q. And the through rates shown in double-column 6 indicate the rates actually in force during the periods in question?

A. Yes, sir.

Q. From the points named in column 2 to the stations named in column 1, *via* the junctions specified in column 3?

A. That is it.

Q. And the other half of 6 shows the allowance per ton per mile included in the rate in the first half of column 6?

A. Yes, sir.

Q. Column 7 are the rates made upon the statute basis for like distances?

A. Yes, sir.

Q. And are to be compared with column 6, the first half of 6 with the first half of 7, and the last half of 6 with the last half of 7?

A. That is it.

Q. Now, column 8 specifies the junction-points through which the coal moved and the distance on the line of the Minneapolis & St. Louis that it did move?

A. Yes, sir, from that junction.

Q. And column 9 (being a double-column) in the first half shows the amount you received for the transportation, that is, the amount your Company received?

A. The proportion of the through rate; the proportion of the rate in the first half of column 6.

Q. The proportion of the rate in the first half of column 6 and tons per mile?

A. Yes, sir.

Q. Column 10 being a double-column figures the statute rate on the distances indicated in column 8?

A. Yes, sir.

Q. Beginning with zero distance in the schedule and going on to the distances indicated; when I say the schedule I mean the act.

A. Yes, sir.

Q. That is called the beginning haul; that is the amount at the first end for the distances specified?

A. That is it.

Q. Column 11 is a double-column and shows the amount allowed for the distance at the latest or last end of the haul as indicated in the schedule?

A. Yes, sir.

Q. And expresses it in cents per ton and per ton per mile in mills?

A. Yes, sir.

Q. And are these junction-points and routes which are referred to on this Ex. 24 the junction-points and routes through which the interstate movement of hard and soft coal into Minnesota is made on your line?

A. Yes, sir.

Q. And the rates indicated in column 6 are the rates that you received?

A. Are the rates actually applicable on the business.

Q. And in column 9 is the proportion per ton of the Minneapolis & St. Louis, (proportion of the through rates,) is that the amount actually received on the division?

A. That is the actual proportion of money received by the junctions named out of the rates named and actually received as per the first half of column 6.

Q. That is, for hauling the distances indicated in 8,—

A. In 8, yes, sir.

Q. —you would receive the rate per ton indicated in the first half of 9?

A. That is it.

Q. And the rate per ton per mile indicated in the last half?

A. Yes, sir. In other words, to make it perfectly plain, the through rate applicable on the actual shipment would be the rate in the first half of column 6; that is, the gross amount of money that would accrue; and the first half of 9 would be the actual proportion that would be given our Company or awarded our Company for the haul for the distance shown from the junctions named in column 8 to the points named in column 1.

Q. That is, it is the idea of the exhibit to compare the through rate actually paid to all of the companies for the transportation with what would be allowed on the statute basis for a like distance?

A. Yes.

Q. And then in the next instance, to compare what the Minneapolis & St. Louis received on this interstate business with what would be allowed for a like distance by the statute?

A. Yes, sir.

Q. First taking the beginning-end of the statute schedule, and next taking the last end of the statute schedule?.

A. Yes, sir.

Mr. O'BRIEN: That is on the theory that there is an end haul without there being a beginning haul?

Mr. BUTLER: Yes, sir, that is on the theory that when you get some coal from Albert Lea from Peoria, and haul it 100 miles, it is the last end; that was the end that Mr. O'Brien insisted upon comparing with the statute first end. Now, we compare them with both, that the Master may see how it works with both ends, and if they want to compare it in the middle, it could be readily done with these tables.

Mr. O'BRIEN: Well, we shall have to cover that, I think, we seem to have left out the middle.

The MASTER: The difference between you is a matter of terminals, I believe?

Mr. BUTLER: Yes, but if you take the tail-end comparison and divide the first five-mile allowance by two and add it to the tail-end comparison, it might be of some value. I don't know whether they would want more than half of the terminal or not on that end,—they need it.

Q. Let us take, for example, Manchester; that is the first station. Now, Mr. Tittemore, as I understand this exhibit, hard coal from Milwaukee *via* Albert Lea to Manchester, travels a distance of 324 miles?

A. Yes, sir.

Q. The through rate is $2.25?

A. Per ton, yes, sir.

Q. The rate per ton per mile is seven mills?

A. Yes, sir.

Q. On the statutory basis, the through rate would be for that distance (324 miles) $1.99?

A. Yes, sir.

Q. Or 6.2 mills per ton per mile?

A. That is right.

Q. That coal moved over your line from Albert Lea to Manchester, a distance of seven miles, indicated in column 8?

A. Yes, sir.

Q. And your proportion of the $2.25 would be 90 cents for that seven miles?

A. Yes, sir.

Q. Or 128.6 mills per ton per mile?

A. Yes, sir.

Q. For that distance on the beginning haul on the statutory basis, the statute would allow 62 cents per ton?

A. Yes.

Q. Or 88.6 mills per ton per mile?

A. Yes, sir.

Q. On its latest haul it would allow you 3 cents instead of the 90?

A. Yes, sir.

Q. And 4.3 mills per ton per mile?

A. Yes, sir.

The MASTER: And in the same way you can go through the whole list?

WITNESS: Yes.

Adjourned until Thursday, October 8th, at 10 o'clock A. M.

FEDERAL BUILDING, St. Paul, Minn., Thursday, October 8, 1908, the hearing was resumed at 10 o'clock A. M.

JAMES N. TITTEMORE,
recalled on behalf of Complainant, testified:

By Mr. BUTLER:

Q. Mr. Tittemore, when we paused day before yesterday, attention had been called to Ex. 24 and it had been described and the first item with respect to hard coal from Milwaukee *via* Albert Lea had been in substance read into the record. Now I would like to have you, if your examination enables you to do so, briefly to generalize the conclusions shown by the exhibit.

A. By taking any example, or the first?

Q. No, I mean to take it all. State generally, if you can, the whole showing with respect to hard coal and what it shows with respect to the soft coal.

A. I refer to Ex. 24, and I find that on hard coal from Milwaukee, Manitowoc and Ashland, in connection with the Wisconsin Central road, shipments coming to the M. & St. L. road at Minnesota Transfer, using the Wisconsin Central distance of 325 miles from Manitowoc to Minnesota Transfer,

gives the following result: First, that the M. & St. L. proportion of the through rate, (that is, the rate actually used, the tariff rate actually used) is from five to fourteen times what we would earn under the end-haul, statute basis, or rather, I would rather call it the end factor, the factor that enters into the haul.

Q. Well, may it be expressed properly this way,—the amount allowed in the tariff for the haul at the end of the route equal to the mileage that the particular interstate shipment moved on the line of the St. Louis road?

A. That is a statement of the fact.

Q. Yes, and that is what is meant by the end haul?

A. The end haul.

Q. It is the amount allowed for the haul at the end of the route?

A. Yes. I think the examples following will demonstrate what the exhibit means to show. For instance, at Chaska, on the Albert Lea division, the M. & St. L. proportion of the through rate on hard coal, for instance, coming to us from the Wisconsin Central at Minnesota Transfer, would be 96 cents; the statute basis would allow us 7 cents per ton.

The MASTER: Assuming that it was the end of a long haul?

WITNESS: Yes, and taking the distance of the foreign line (of the Wisconsin Central line) 325 miles up to Minnesota Transfer; then it leaves a certain mileage for the Minneapolis & St. Louis road.

Q. Which is 26?

A. Which is 26. Take that from the 351 miles gives you 325 miles. The statute-basis rate for 325 miles would be $1.99. Your distance through over the Wisconsin Central road is 351 miles to Chaska, Minnesota; your distance to Minnesota Transfer is 325 miles; that leaves 26 miles for the M. & St. L. haul, for which we get, out of the tariff rate, (which would be $1.75) 96 cents.

Q. Now, the next question is, what amount is allowed in the tariff for hauling 26 miles after you have passed the 300 mile point.

The MASTER: By the statute?

Mr. BUTLER: By the statute.

The MASTER: Then you start out as though the haul under the statute was 351 miles, and you figure up what it would be for the 325 miles, and then you take that from the total, and it gives you what you claim would be allowed for the 26 miles?

WITNESS: For the end haul, or 7 cents.

Mr. BUTLER: I interrupted Mr. Tittemore for the purpose of making it clear what was meant by the comparison indicated in column 11, the end haul. Now, I think if he will go on we understand our terms.

The MASTER: Which in the case he is citing does not include either terminal?

Mr. BUTLER: No, sir.

WITNESS: That is the end haul.

Mr. BUTLER: That is the last end haul. Now, the next statement he will make will give the head end haul and the comparison where both terminal allowances are included.

Q. Now, make the statement from Chaska.

A. But that is the tail end.

Q. Go on and finish that.

A. At Hanley Falls, on the Pacific division, the M. & St. L. proportion of the through rate (that is, the rate actually used in billing the shipment) would be $1.35 per ton; the statute basis would allow 26 cents per ton. At Sherburne, Minnesota, on the Southwestern division, the M. & St. L. proportion of the through rate (and when I speak of through rate I always mean the actual tariff rate used) is $1.49; the statute basis would allow 26 cents. The M. & St. L. proportion, as per this Ex. 24, or the rate per ton per mile, would range

from 8.1 mills at Madison, Minnesota, to 36.9 mills per ton per mile at Chaska, while under the statute basis the rate per ton per mile would range from 1.7 mills at Madison to 2.7 mills at Chaska.

Q. Now, can you generalize the showing of Ex. 24 with respect to a comparison of the Minneapolis & St. Louis proportion of the through rate compared with the statutory allowance for the same haul, getting at that statutory allowance by taking the head end of the schedule or beginning haul, which includes the allowance for two terminal services?

A. Ex. 24 shows that the M. & St. L. proportion is in all cases in excess of the so-called beginning haul, statute basis, ranging from 48 cents per ton at Montgomery to 10 cents per ton at Madison, and 32 cents at Sherburne in excess of the statute basis. For instance, at Montgomery, the M. & St. L. proportion of the actual tariff rates used would be $1.29; the statute allowance would be 81 cents; at Sherburne the M. & St. L. proportion would be $1.49; the statute allowance $1.17; at Madison the M. & St. L. proportion would be $1.41, while the statute allowance would be $1.31. It shows that the M. & St. L. proportion, the rate per ton per mile, would range from 8.1 mills at Madison to 36.9 mills at Chaska, while under the statute basis the range would be 7½ mills at Madison and 26.9 mills at Chaska.

The MASTER: That is, if you add the two terminals to the rate given for the end haul?

WITNESS: Yes; for instance,—

The MASTER: You are still, under the state rate, largely behind what you would otherwise get?

WITNESS: Yes.

The MASTER: That, in brief, is what you have just explained here?

WITNESS: Yes.

Q. That is, your second statement just now compares the

amount actually earned on the division with the other companies on this through rate interstate hard-coal haul with what would be allowed for hauling it like distances as an original shipment under the statute rate?

A. Take the Chaska example for the 26 miles, under the end-haul figuring we get 7 cents; now, under the beginning-end haul we would get the statute rate for 30 miles.

Q. That is shown right in here?

A. Yes, that is shown right in here; it would give us the figures named in my last answer.

Q. And these three stations that you have mentioned are simply taken as instances?

A. And illustrations, yes, to make the table plain to anyone who is reading it; it should have been printed in it.

Q. You may proceed.

A. And what is the next question?

Q. That is the comparison of the through with the through. I want you now to generalize with respect to what Ex. 24 shows by comparing the through rates actually in effect (interstate rates) with what the statute allows for like distances, the statute being extended to the greater distance on the principle we have referred to in the introduction of Ex. 22; and 22-A, I think, covers the commodity one.

A. Ex. 24 shows that, using the actual mileage from Manitowoc to Minnesota Transfer *via* the Wisconsin Central road of 325 miles, and the actual distance beyond Minnesota Transfer, the through rate is in all cases equal to or in excess of the statute rate at all points except at Chaska and at Arlington.

Q. That is, at all stations on the line except those two?

A. Those two. The mileage figured that way would not be the shortest mileage. We have figured the actual mileage that shipments would travel naturally over recognized routes as per our tariffs. We could have figured on shorter mileage

if we used our competitors' mileage.

Q. In which instance the statute allowance would be less and the apparent advantage to the Company in the comparison would be greater?

A. Yes, sir. At Manchester, for instance, the through rate from Manitowoc *via* Minnesota Transfer would be $2.25 per ton on hard coal; the statute basis would be $2.20. At Fairfax $2.25; the statute basis, $2.18. At Boyd $2.35; statute basis, $2.25. New Ulm, through rate, $2.25, statute basis, $2.18.

The MASTER: That is, assuming that the interstate distance has been adopted by the state and the state rate applied to it?

Mr. BUTLER: Yes, sir; or in other words, it applies to the distance the tariff or the principle of the tariff extended.

The MASTER: Just as though it was intrastate?

Mr. BUTLER: Yes, sir, that is it.

WITNESS: That is the way the statement is figured.

Q. Now, to recapitulate, then, with respect to hard coal, in so far as you have stated it, comparing that which the Minneapolis & St. Louis gets as its proportion of the through rate with what we have defined as the end haul, the range is from five to fourteen times as much?

A. Yes, sir.

Q. Comparing it with the beginning haul it is in excess in all cases for equal distance allowed by the statute?

A. Yes, sir.

Q. Comparing the whole rate—through interstate rate—with what the rate would be on the basis of the statute, the through rate exceeds the statutory basis in all instances except as to two stations, at Chaska and Arlington?

A. That is correct.

Q. Now, with respect to soft coal, will you indicate, in the same manner that you have with respect to hard coal, what this exhibit shows?

A. Ex. 24 shows, in the case of soft coal shipments from Milwaukee, Manitowoc and Ashland *via* the Wisconsin Central road and Minnesota Transfer, using the Wisconsin Central mileage of 325 miles from Manitowoc to Minnesota Transfer, that the M. & St. L. proportion of the through tariff rate is from three and a half to ten times what we would earn under the so-called end-haul statute basis. For instance, at Arlington the M. & St. L. proportion of the through rate is $1.08 per ton; the statute 11 cents per ton. Fairfax, M. & St. L. proportion of through rate, $1.21 per ton; statute basis 15 cents per ton. Madison, tariff proportion, $1.40; statute proportion 22 cents per ton. At St. James, through rate proportion, $1.20 per ton; statute basis 18 cents per ton. At Manchester, M. & St. L. proportion of through rate, 70 cents per ton; the statute basis 19 cents per ton. The rate per ton per mile ranges from 1.3 mills at Madison to 2.7 mills at Chaska, under the statute basis, compared with a range of from 6.2 mills at Manchester to 25.4 mills at Chaska, based on the M. & St. L. proportion of the through tariff rate.

Q. Now, will you next make like comparison with the statutory allowance for the beginning haul, and by which I mean for the haul of that distance between stations in Minnesota, conceiving the shipment to originate at one and terminate at the other.

The MASTER: Assuming that the whole haul was within the state?

Mr. BUTLER: Yes, sir.

A. Ex. 24 would show, in that case, that the M. & St. L. proportion of the tariff rates used at all stations except on the Albert Lea division—where the blanket adjustment holds because of the Minneapolis situation—the M. & St. L. proportion of the through tariff rate is in excess of the beginning-haul statute basis. For instance, at Arlington the proportion

of the through tariff rate is $1.08, the statute basis 65 cents; Fairfax, proportion of through rate $1.21; statute basis, 77 cents.

Mr. O'BRIEN: Mr. Tittemore, you have got that written out there, haven't you?

WITNESS: Yes.

Mr. O'BRIEN: Well, it is pretty hard to catch it; you go rather fast.

WITNESS: Well, I will go slow.

Mr. O'BRIEN: Now, take that at Fairfax, the proportion is what?

WITNESS: The proportion of the through tariff rate would be $1.21 cents, the statute basis 77 cents. Now, at Madison, the M. & St. L. proportion of the through rate is $1.40; the statute basis $1.05. At St. James the M. & St. L. proportion of the through rate is $1.20; the statute basis 86 cents. Ex. 24 shows that the rate per ton per mile earned by the M. & St. L., out of its proportion of the through tariff rates, ranges from 8 mills at Madison, Minnesota, to 18.9 mills at Arlington, Minnesota, while under the statute basis it would earn a range of from 6 mills at Madison, Minnesota, to 11.4 mills at Arlington. Now, the blanket adjustment, that was referred to as holding because of the Minneapolis situation, is this:—

Q. That is, you now refer to the exception made in your first statement, to-wit, stations on the Albert Lea division; that is, stations between Albert Lea and the city of Minneapolis?

A. Yes. Ex. 24 shows that at the Albert Lea division points, as explained by counsel, the M. & St. L. proportion is only slightly less than the statute basis; for instance,—

Mr. O'BRIEN: Now, are you on soft coal?

WITNESS: This is on soft coal, yes.

Q. Now, this is a comparison of the excepted stations on the Albert Lea division.

A. At Manchester the M. & St. L. proportion of the through rate would be 70 cents, while the statute basis would be 83 cents; at Waseca the M. & St. L. proportion is 70 cents, and so at Montgomery, while the statute basis would allow 74 cents per ton in the case of the former and 64 cents per ton in the case of the latter; and at Chaska the M. & St. L. proportion would be 66 cents a ton, and the statute basis would be 57 cents a ton.

Q. Now, will you indicate the comparisons of the whole through rate with what the rate would be for like distance under the statute.

A. In that case Ex. 24 discloses that, using the actual distance from Manitowoc *via* Minnesota Transfer, the statute rate to all points except on the Albert Lea division, where the blanket adjustment because of the Minneapolis situation governs, would be less than the through rates, and again we are using the distance actually traveled by shipments and not taking the short distances to junctions into consideration.

Q. If the shorter distance was taken and figured on the statue basis the statute rate would be less and therefore the comparison would be more favorable to us, but you take, as I understand it, the routes along which the tonnage moves?

A. That is correct. Ex. 24 shows that at Arlington the through rate is $1.80, the statutory rate $1.70; at Hanley Falls, the through rate is $2.25, the statute rate $1.79; at Madison the through rate is $2.25, the statute rate $1.81; at St. James the through rate is $2, the statute rate $1.77. Now, it further shows that, on soft coal from the Peoria—

Mr. O'BRIEN: When you refer to the statute rate you mean the statute rate extended on the theory which you have adopted in Ex. 22?

WITNESS: Yes.

Mr. O'BRIEN: There is no statute rate for that through haul of 443 miles.

Mr. BUTLER: Well, that has already been explained.

WITNESS: Yes.

Mr. BUTLER: The Judge understands that, I am sure. Of course, it is noteworthy that in some instances,—for instance, the first one that we come to, it is under 400 miles, and the extension principle is not applied at all, it is just reading the tariff; in other instances, where it is over 400—

The MASTER: You are simply reading the tariff and applying it to interstate hauls?

Mr. BUTLER: That is all.

The MASTER: But when you get outside of the 400-mile limit—

Mr. BUTLER: We extend it.

The MASTER:—then you extend it at the lowest rate which has been prescribed by the tariff. That is as I understood.

Mr. BUTLER: By adding for each mile hauled the lowest rate per ton mile that was added by the State in building up its tariff. That, I think, is distinctly understood.

Mr. O'BRIEN: I know you have explained it, Mr. Butler, but I thought in the use of this term no harm would come in calling attention to it.

Mr. BUTLER: But I wanted to be sure that it was definite, once for all.

Mr. O'BRIEN: You certainly have *tried* to explain it.

Mr. BUTLER: The statute does not apply to interstate rates.

Mr. O'BRIEN: It is not only that the statute gives no such rate for that, but what I claim about it is that it can't be assumed that if a rate were being made for a haul of more than 400 miles, the same scale of reductions would be made; that this must be considered as a tariff for a place which will terminate within 400 miles.

Mr. BUTLER: Well, of course, in making our extension we had to use our best judgment as to what the Commission would have done for the added distance. In the merchandise rate, when they passed 200 miles they divided the allowance per ton mile for the haul; when they passed 400 miles they divided it again and made it a quarter. Now, they only went to the 400 miles in the commodity rates; we didn't divide it again as they did in the merchandise rates, but we took the allowance for the haul and rate per ton mile which they allowed in the last—

The MASTER: 200 miles?

Mr. BUTLER: Well, in the last *step* of distance. It is not uniformly 200 miles in the commodity schedule, but in the last step more than 100, no doubt, in each instance.

The MASTER: Yes, that is right.

WITNESS: Ex. 24, for instance, discloses on soft coal from the Peoria district *via* the Burlington road and Minnesota Transfer, using the Burlington distance of 448 miles from Peoria, first, that the Minneapolis & St. Louis proportion of the through tariff rate is from 8 to 17 times what we would earn under the end-haul statute basis. For instance, at Fairfax the M. & St. L. proportion is $1.41 per ton, the statute basis would give 8 cents per ton; at Madison, the M. & St. L. proportion would be $1.41 per ton out of the through rate, and the statute basis 17 cents; at Sherburne, the Minneapolis & St. Louis proportion is $1.16 per ton, and the statute basis 11 cents per ton. The rate per ton mile, based on the M. & St. L. proportion, ranges from 8.1 mills at Madison to 6.8 mills at Arlington, while under the statute basis the rate per ton per mile ranges from 9 mills at Fairfax to 1.1 mills at Arlington.

Q. Now, so far you have compared the Minneapolis & St. Louis proportion with the end-haul allowance of the statute. Now, state what this exhibit shows by comparing that same

proportion which the Minneapolis & St. Louis actually gets with what it would get if it hauled the coal the same distance between stations under the statute rates in Minnesota.

A. Under those conditions, Ex. 24 shows that the M. & St. L. proportion is, in all cases, in excess of the so-called beginning-haul statute basis; for instance, at Arlington the M. & St. L. proportion is 96 cents, the statute basis 65 cents; Fairfax and Hanley Falls, M. & St. L. proportion $1.41, statute basis, 77 cents and 93 cents, respectively; Sherburne, M. & St. L. proportion, $1.16 per ton, statute basis, 94 cents per ton; and the rate per ton per mile ranges, taking the M. & St. L. proportion into consideration, from 8.1 mills at Madison to 16.8 mills at Arlington, while the statute basis ranges from 6 mills at Madison to 11.4 mills at Arlington.

Q. Now, will you make comparison between the through interstate rate and what that rate would be on the statute basis for the same mileage?

A. Under those conditions, Ex. 24 shows that using the actual distances from the Peoria district *via* Minnesota Transfer, the through rate is in all cases in excess of the statute basis except at Arlington. For instance, at Fairfax, the through rate is $2.25, statute $1.85; Hanley Falls, through rate, $2.25, statute, $1.90; at Madison, $2.25 per ton, statute basis, $1.94 per ton; Sherburne, through rate, $2 per ton, statute basis, $1.90 per ton. That takes in the soft coal from the Burlington at Minnesota Transfer.

Q. Yes, that is the Peoria district, soft coal, from the Minnesota Transfer junction with the Burlington?

A. That is it.

Q. Now, will you tell us what the exhibit shows with respect to the soft coal from Illinois Central mines in connection with the Illinois Central road, using the La Salle distance?

A. In that case Ex. 24 shows that on soft coal from the Illi-

nois Central mines in connection with the Illinois Central railroad, using the La Salle distance (as the M. & St. L. in all cases receives the La Salle division of the rate) the mileage used being 350 miles from La Salle to Albert Lea and 394 miles from La Salle to Storm Lake, shows that the M. & St. L. proportion of the through rate is from three to twenty-eight times what we would earn under the so-called end-haul statute basis. For instance, at Manchester the M. & St. L. proportion of the through rate, 56 cents, statute basis, 2 cents; Waseca, M. & St. L. proportion, 56 cents, statute basis, 6 cents; Fairfax, M. & St. L. proportion, $1.13, statute basis 22 cents; at Madison, the M. & St. L. proportion is $1.35, the statute basis would yield 29 cents; at St. James the M. & St. L. proportion is 90 cents and the statute basis would allow 11 cents; and the rate per ton per mile would range from five and two-tenths mills to eighty mills under the M. & St. L. proportion of the through rate while the statute basis would range from eight mills to two and nine-tenths mills.

Q. Now, will you compare the Minneapolis & St. Louis proportion of the through rate with the statute beginning-haul basis? That is, what would be allowed by the statute to the Minneapolis & St. Louis for the mileage it actually hauls this stuff.

A. Ex. 24 shows in that case that the M. & St. L. proportion of the through rate will, in some cases be less, and in other cases more, than we would earn under the so--called beginning-haul statute basis. For instance, at Fairfax the M. & St. L. proportion is $1.13 per ton, the statute basis, $1.07 per ton; at Hanley Falls, the M. & St. L. proportion through rate $1.35, the statute basis, $1.28; at St. James, the through rate proportion 90 cents, the statute 84; at Sherburne the through proportion 90, the statute 75; at Manchester the through proportion 56, statute 49; at Waseca the through

proportion 56, the statute basis 58; at Chaska the through proportion 56, the statute basis 75.

Q. Now, will you state what the exhibit shows with respect to coal from the Peoria district *via* Minnesota Transfer, making the comparison of the Minneapolis & St. Louis proportion first with the end-haul, next with the beginning-haul, and then through rate against through rate, if you have done that.

A. Ex. 24 shows that using the actual distance from the Peoria district *via* Minnesota Transfer, the through rate, the through tariff rate compared with the statute basis, varies; that, with the exception of the Albert Lea division, where the rates are affected on account of the "blanket" adjustment owing to the Minneapolis situation, the through rate ranges higher than would be allowed for the statute basis using same mileage. For instance, at Fairfax the through rate is $2.25, the statute basis $1.85; at Hanley Falls the through rate is $2.25, the statute basis $1.88; at Madison the through rate is $2.25, the statute basis $1.92; at St. James the through rate is $2, the statute basis $1.83. At stations on the Albert Lea division, or the stations referred to, the through rate in all cases is $1.40; the statute basis would vary from $1.66 at Manchester to $1.76 at Chaska.

Q. That is, the "blanket" arrangement on the Albert Lea division is this: That, beginning at Manchester, seven miles north of Albert Lea, and extending to Minneapolis, the rate is uniformly, on this soft coal from the south, $1.40 per ton. Have I that right?

A. Yes.

Q. And figuring the statute basis, the distances would vary, and, of course, the statutory allowance for the through rate would vary,—as you say, from $1.66 a ton at Manchester to $1.76 a ton at Chaska?

A. That is correct.

The MASTER: That is, all the towns from Manchester to Minneapolis get the same rate on coal?

WITNESS: Yes.

The MASTER: There is no discrimination against any of the towns in that regard, but the statute rate, of course, is so much per mile?

Mr. BUTLER: That is the distance tariff.

The MASTER: The distance tariff.

Q. Now, you have so far spoken of the Peoria soft coal and the Illinois Central. Will you tell us what this exhibit shows with respect to the same coal *via* the Iowa Central?

A. In the first place, we showed the Peoria district coal coming to us from the Burlington and Minnesota Transfer; in the second case, coming to us from the Illinois Central *via* Albert Lea, Minnesota, or Storm Lake, Iowa; and now Exhibit 24 will also show that on soft coal from the Peoria district, coming to us at Albert Lea from the Iowa Central, using the distance of 371 miles from Peoria to Albert Lea, (which is the Iowa Central distance) it shows that the M. & St. L. proportion of the through rate is from four and one-half to twenty times what we would earn under the so-called end-haul statute basis. For instance, at Manchester the M. & St. L. proportion is 42 cents, the statute basis 2 cents; at Montgomery the M. & St. L. proportion 42 cents, statute basis 7 cents; Fairfax, through proportion $1.13, statute basis 17 cents; Madison, through proportion $1.13, statute basis 25 cents; St. James, through proportion $1, statute basis 19 cents. Using the M. & St. L. proportion of the through rate, the rate per ton per mile varies from 4.3 mills at Madison to 60 mills at Manchester; the Minnesota statute basis varies from 9 mills at Hanley Falls to 2.9 mills at Manchester.

Q. Will you make the same statement with respect to the showing of Ex. 24, comparing the Minneapolis & St. Louis proportion with the so-called beginning-haul on the statutory

basis? That is, compared with what you get for the mileage hauled with what you would get on the same mileage under the statute, if the shipment originated and terminated on your line in Minnesota.

A. Under those conditions, Ex. 24 shows that the M. & St. L. proportion is, in some cases, greater and in some cases less, than would be allowed under the so-called beginning-haul statute basis. This is owing to a roundabout haul from Albert Lea to some of our territory and the "blanket" adjustment of rates on the Albert Lea division. It shows that at Fairfax the M. & St. L. proportion is in excess of beginning-haul statute basis; at other points, because of the "blanket" adjustment on the Albert Lea division and the long haul at other points, the statute rate ranges somewhat under the M. & St. L. proportion; for instance, at Manchester, through proportion 42 cents, statute basis 49 cents; at Arlington, through proportion 81 cents, the statute basis 94 cents; at Madison, through proportion $1.13 per ton, statute basis $1.42 per ton; at New Ulm, through proportion 90 cents per ton, statute basis $1.42 per ton.

Q. The long-haul stations, the roundabout haul that you have referred to, would be on coal coming to you at Albert Lea for stations on the southwestern division, which would involve a haul to Hopkins, nine miles out from Minneapolis, then westerly from Hopkins along the line to Madison, which runs through into Dakota to Watertown and now beyond?

A. Yes.

Q. And the "blanket" arrangement to which you have referred in this last explanation is the same matter heretofore spoken of as the $1.40 flat rate to various stations from Manchester to Minneapolis?

A. Yes, sir.

Q. Now, will you state what this exhibit shows with respect to the comparison of the through rate under the tariff

actually used, with the statutory allowance for like distances; that is, compare whole rate with whole rate.

A. Under those conditions Ex. 24 shows that using the actual distances from Peoria district *via* Albert Lea, the through rate is, in some cases higher, and in some cases lower, than the statute basis would be for the same mileage; for instance, at Fairfax the through rate is $2.25, the statute basis $1.86 per ton; Hanley Falls, through rate $2.25, statute basis $1.90 per ton; Boyd, through rate $2.25 per ton, statute basis $1.92 per ton; at Madison, through rate $2.25, statute basis $1.94 per ton; St. James, through rate $2 per ton, statute basis $1.90 per ton. On the Albert Lea division, (that is, stations Manchester to Minneapolis) because of the "blanket" rate adjustment, the Peoria rate to all points is $1.40, and the statute basis would range from $1.69 to $1.77 per ton.

Recess until 2 P. M.

AFTERNOON SESSION.

Mr. BUTLER: We offer for marking (and the mark will be Complainant's Ex. 25) a statement captioned as follows: "Statement showing through rates, M. & St. L. R. R. Revenue and Rates per ton per mile on Traffic from Chicago, Illinois, to Minneapolis & St. Louis Railroad Stations in Minnesota, compared with statute rates and rates per ton per mile under the Commission's Order of September 6, 1906, for Similar Distances *via* Albert Lea, Minnesota and Estherville, Iowa." This statement relates to the class business.

The statement was marked "Complainant's Ex. 25—Tittemore."

Q. Now, in order that this exhibit may be fully explained in the record, I want to ask you to describe it, commencing with the first column, or the column numbered 1 and indicate what is entered in each column and what items are to be compared.

A. Ex. 25 is arranged by columns, and in column marked "1" it designates the station from which the shipments of freight moved.

Q. Chicago in all instances, isn't it?

A. Chicago in all instances. Column 2 indicates the destination to which the freight moves, and varies, taking in representative points in Minnesota.

Q. On the line of your Company?

A. On the line of the Minneapolis & St. Louis road. Column 3 indicates the routing or the station *via* which or through which the freight comes to the M. & St. L. road.

Q. Either Albert Lea or Estherville?

A. Either Albert Lea or Estherville.

The MASTER: Do you mean by that the point where the road takes the freight from some other road?

WITNESS: Where the Minneapolis & St. Louis road takes or gets the freight from the other road, yes; it is the junction-point through which the freight passes.

The MASTER: That is what you mean?

WITNESS: Yes.

The MASTER: Where you take the freight on your road from some other carrier?

WITNESS: That is it.

Q. Where is Estherville, while we are on that subject?

A. It is the junction of the M. & St. L. road with the Rock Island road, in Iowa.

Q. Now, column 4.

A. Column 4 indicates the class of freight handled.

Q. Those are the classes named in the order of the Commission and defined by the Western Classification?

A. Yes, sir. Column 5 indicates the through distance from the station named in column 1.

Q. From Chicago?

A. Chicago, to the station named in column 2; and is ar-

rived at by using the Illinois Central railroad distance of 382 miles from Chicago to Albert Lea and the Rock Island distance of 464 miles from Chicago to Estherville, Iowa, and then adding to those distances the distances of the Minneapolis & St. Louis railroad from those junctions to the destinations named in column 2. Column 6, which is a double-column, indicates the through tariff rates used, and the first half of column 6 designates the rates in dollars and cents per hundred pounds, and the other half of the column indicates the per ton mile rate in mills. The seventh column indicates the statute basis, the first half indicating the rates in cents per hundred pounds, and the other half indicating the rate per ton per mile in mills.

Q. The words "Statute Basis" are meant to refer to the order of the Commission?

A. To the order of the Commission of September 6th.

Q. "Order basis" might be more verbally accurate, but it is good enough as it is, I think.

A. Column 8 indicates the Minneapolis & St. Louis distance from the junction-point for instance, from Albert Lea or Estherville, to the points or destinations given in column 2. Column 9, being a double-column, indicates the M. & St. L. proportion of the through rate, which is designated in column 6; and the second half of the column indicates the per ton per mile in mills of those rates that the proportion earns. Column 10 is a double-column and refers to an order basis or the so-called beginning-haul under that basis, the first half of the column being the rates in cents per hundred pounds, and the other half the per ton per mile in mills. The indication-mark in column 10 refers to a note at the bottom of the sheet, and shows that the order basis or "Statute Basis" as it is given here (beginning-haul), is the basis of rates shown in the Commissioners' schedule for beginning or first haul, while the statute basis or order basis for the end-haul is the basis of rates

shown in Commissioners' schedule for the end or last haul. Column 11 is also a double-column. It refers to the order basis or statute basis as it is given in the column, and refers to the end-haul, and the first half of the column gives the rates in cents per hundred pounds, and the other half gives the ton per mile in mills. It is the intention of the sheet to show comparisons as between column 6 and 7 and as between the subdivisions of column 9 and the subdivisions of columns 10 and 11.

Q. That is, 9 shows the amount of money actually received by the St. Louis road from the tariff specified in 6?

A. That is it.

Q. And compares it with 10, which shows the amount that the schedule in the Commission's order would allow for the first haul at the distances mentioned in column 8?

A. Yes.

Q. And 9 is also to be compared with column 11, which shows the amount allowed for the last haul for a distance equal to those distances specified in column 8?

A. Yes, sir.

Q. Now, that the record may more clearly show the purpose and effect of the exhibit, I would like to have you take the first item, as respects the First class, a shipment from Chicago to Manchester *via* Albert Lea, a distance of 389 miles. The through rate would be—?

A. 60 cents.

Q. The rate per ton per mile?

A. 31 mills.

Q. The statute would allow for 389 miles 68.84 cents?

A. Yes, sir.

Q. And in mills per ton per mile would be 35½?

A. Yes, sir.

Q. The distance hauled by your road would be seven miles?

A. Yes, sir, from Albert Lea to Manchester.

Q. And on your division arrangements with the connecting carriers you actually received 24 cents for the seven miles?

A. Yes, sir.

Q. Whereas, the statute allowance would be, as shown in column 10, only 12.98 cents?

A. Yes, sir.

Q. For like haul, considering that the shipment originated and terminated on your line in Minnesota?

A. Yes, sir.

Q. And the amount allowed by the statute for the last seven miles of the 389 miles haul would be .98 of one cent?

A. Yes, sir.

Q. Or 28 mills per ton per mile?

A. Yes, sir.

Q. In other words, your Company actually would receive on your proportion now, in terms of mills per ton per mile, 686 mills per ton per mile?

A. Yes.

Q. On the statute basis for the beginning-haul, it would receive 371 mills per ton per mile?

A. Yes.

Q. And on the end-haul, 28 mills per ton per mile?

A. Yes.

Q. Now, Mr. Tittemore, just one word further by way of explanation of Ex. 25: Comparing the figures in column 9 with the figures in column 10, 9 shows in cents per hundred pounds and in mills per ton per mile what your company actually receives on the interstate business on the basis of division applied?

A. Yes.

Q. And the figures in 10 show what it would receive for the equal haul on the same class of freight between two points on your own line in Minnesota?

A. Yes, under the Commissioners' order.

Q. Under the Commissioners' order?

A. Yes, sir.

Q. That is, applying to the distances in 8, seven miles to Manchester, 32 to Waseca, 58 to Montgomery, and so on,—

A. Yes.

Q. —the schedule fixed by the order will produce the figures in the first half of 10?

A. Yes.

Q. To be compared with what you get for like distances on your interstate business?

A. Yes.

Q. Now, I woud like to have you state generally what this exhibit shows with respect to the comparisons which are intended to be made by it, generalizing so that we may have in the record the substance of the exhibit.

A. Exhibit 25 shows the through class rates from Chicago, compared with the basis fixed by the Commissioners' order of September 6th, and shows first, that the M. & St. L. proportion of such through rates is from 3½ to 29 times what would be allowed for the end-haul statute-order basis. At Sherburne the M. & St. L. proportion of the through rate from Estherville ranges from 30 cents First class to 6.4 cents Class E, and the rate per ton per mile from 333 mills to 71.1 mills; the statute or order basis for similar distance from .98 of a cent, First class, to .19 of a cent Class E; and the rate per ton per mile from 10.9 mills to 2.1 mills. For instance, at Fairfax, Minnesota, the M. & St. L. proportion of the through rate *via* Albert Lea ranges from 35 cents First class to 7.5 cents Class E; the rate per ton per mile from 39.3 mills to 8.4 mills, and the statute or order basis for similar distance from 8.82 cents First class to 1.76 cents Class E; and the rate per ton per mile from 9.9 mills to 2 mills. The Exhibit also shows that the M. & St. L. proportion of the through rate from junction-point is equal to or exceeds the beginning-haul statute or order basis

at Manchester, Waseca, Montgomery, Hanley Falls, Boyd, Madison, New Ulm, Sherburne, and St. James. Only at Chaska, Arlington and Fairfax does the statute basis exceed the M. & St. L. proportion.

Q. That is, as I understand it, at all points on the line of the Company it receives for merchandise in interstate shipments *via* the junctions of Albert Lea and Estherville, more for the distance hauled by the Company than the statute would allow at all stations excepting three, Chaska, Arlington and Fairfax?

A. That is correct.

Q. And, of course, you have not named in your statement all of the stations where the advantage is in favor of the Company, comparing the proportion of the through with the first-haul basis of the order rates; those stations that you did mention, beginning with Waseca and ending with St. James, were illustrative of the conditions between, as I take it?

A. Beginning with Manchester, yes; but they include all of the stations named in Ex. 25 except Chaska, Arlington and Fairfax.

Mr. O'BRIEN: Wouldn't it be a good thing first to show the Master where these stations are?

Mr. BUTLER: I would be very glad to have you. Mr. O'Brien wanted to point out to your Honor on the map where the stations named in column 2 are located.

(The stations named were pointed out on the large map by Mr. O'Brien.)

Q. You may go on, Mr. Tittemore.

A. Ex. 25 also shows that, by using the actual distance *via* the routes shipments would travel, the through rate (that is, the actual rate used) exceeds the statute or order basis at Hanley Falls, Boyd and Madison. At stations on the Albert Lea division the situation is affected by the "blanket" adjustment owing to the Minneapolis situation, and the through rates at

Manchester, Waseca, Montgomery and Chaska are lower than would be the statute basis for similar distances. The statute or order rates are also slightly in excess of the through rates at Arlington, Fairfax, New Ulm and St. James.

Q. That is, comparing through rate with through rate?

A. Through rate with through rate.

The MASTER: That "blanket" arrangement you speak of applies to all classes of commodities?

WITNESS: Yes, all classes.

The MASTER: All kinds of shipments. I think you explained it that it was done to equalize the cities and put them on a like basis?

WITNESS: Well, it is the lake-and-rail and water competition that fixes a stationary rate in the case of class rates at Minneapolis, and that has been used as a maximum at all intermediate points on the lines running from Chicago to Minneapolis; that is, they make the Minneapolis rate the highest rate at any of the intermediate points. The rate from Chicago to Albert Lea, for instance, on our road at one time was much higher than to Minneapolis, but under the working of the federal statute and the interstate commerce law, it has gradually grown, so that the Minneapolis rate, whatever it is, will be the maximum at all intermediate points on our road, and it throws that "blanket" all over our road.

Q. That presents, with respect to the classes and coal, and perhaps other commodities, one of that class of cases recognized so frequently by the Interstate Commerce Commission where they permit the water competition to be met, does it not?

A. It might permit it to be met, but it has not been met in this case. We don't assume that we can do it under any decision,—our Company does not.

Q. But the rate into Minneapolis—

A. Water competition, Mr. Butler, in other words, does

not, alone, fix the rate at Minneapolis, but it has much to do with it; for instance, water competition, connected with the rail competition up to Minneapolis, had a great deal to do with it and that fixed a relation that the Soo Line after a while fixed on their all-rail, and that fixed a rate, as it were, or a part of a rate, from Chicago to Minneapolis to be added to the haul east of Chicago to equalize and compete against the Soo through rate, and in that way finally settled down on the 60-cent basis. For instance, no intermediate rate in the state on the M. & St. L. road is higher than the Minneapolis rate.

Q. But meeting the Minneapolis rate you "blanket" down to Albert Lea?

A. Yes; but we consider there are other conditions, when we get into Iowa, so that the rate from Chicago to Mason City, on the Iowa Central, through which station shipments would come right straight over the Iowa Central to Minneapolis, is higher away down there, and on a different basis, than it is at Minneapolis. For instance, from Peoria to Chicago, or Peoria to Mason City, or Chicago to Mason City, would be probably on the basis of 63 cents for First class, while the rates from Chicago to Albert Lea, just a little ways above there, in Minnesota, would be 60 cents, and so on, to Minneapolis.

Mr. BUTLER: There will be more of that adjustment later in the testimony, your Honor.

Q. Now, if you will resume.

A. At Sherburne, the rates are practically the same; in arriving at the statute or order basis compared with the through rate, we have used actual distance *via* the junction designated, taking the Illinois Central distance of 382 miles from Chicago to Albert Lea, the Rock Island Company's distance of 464 miles from Chicago to Estherville, and have not taken the short-line distance either *via* our own junction-points or *via* direct line.

Q. And if the shorter-line distance had been taken and the order rates applied to the shorter-line distance, that would have made the through rate or statute basis, which is indicated in column 7, lower and made the comparison apparently more favorable to the Company?

A. That is correct. For instance, to show the distance, from Chicago to Chaska *via* Minnesota Transfer, would be 441 miles as against the distance used of 467 miles *via* Albert Lea. The short line to Waseca would be the Northwestern distance of 393 miles, as compared with 414 miles *via* Albert Lea and the M. & St. L.; at Chaska the short line would be the Milwaukee distance of 437 miles as against the Albert Lea distance of 467 miles.

Q. That 437 would be continuous mileage on the line of the Milwaukee road itself from Chicago to Chaska?

A. Yes, sir.

Q. A single line?

A. Yes, sir. At Hanley Falls the short line distance would be 553 miles, using the M. & St. L. to Minnesota Transfer and the Chicago, Milwaukee & St. Paul beyond; at New Ulm the short line is the Northwestern distance of 448 miles, as against 533 miles via Estherville and the M. & St. L.

Q. And the Northwestern is a continuous line from Chicago to New Ulm?

A. Yes, sir. At St. James the short line is the Northwestern line of 457 miles as against 507 *via* Estherville and the Rock Island; and the Northwestern mileage there is the Northwestern and Omaha mileage into St. James.

Q. That is, the nearest junction of the Northwestern and Omaha to St. James is at Butterfield, a short distance southwesterly from St. James?

A. Yes. At Sherburne the short-line distance is the Milwaukee & St. Paul, direct distance of 447 miles over their own line, as against 482 miles *via* Estherville and the M. & St. L. Company.

Mr. BUTLER: I offer in evidence all of the exhibits commencing with Complainant's Ex. 21-A, 22, 22-A, 23, 24 and 25.

We now offer in evidence a paper which will be marked Complainant's Ex. 26, under the following caption, namely: "Statement Showing Through Class Rates, M. & St. L. R. R. Revenue and Rates per ton per mile from Chicago, Illinois, to Minneapolis and St. Louis Railroad Stations in Minnesota, Compared with the Statute Rates and Rates Per Ton Per Mile under Order of Commission September 6, 1906, for Similar Distances, *via* Minnesota Transfer." This is the same as the last one except the junction is different. The other junction, you see, was *via* Albert Lea and Estherville.

Q. Now, Mr. Tittemore, as I understand Ex. 26 it was prepared on precisely the same plan and basis as was Ex. 25, except that in 26 the distances *via* Minnesota Transfer junction were taken instead of the distances *via* Albert Lea and Estherville junctions which were taken in Ex. 25?

A. That is correct.

Q. I think it will not be necessary to further explain the plan of the exhibit or the comparisons intended to be made, and I will ask you, Mr. Tittemore, to state generally what the comparisons are which are shown; that is, generalize from the exhibit so that the record may disclose the substance of our claim with respect to it.

A. Ex. 26 is a statement of through class rates *via* Minnesota Transfer from Chicago compared with the statute or order basis, and shows first, that the M. & St. L. proportion of the through rate is from five to twelve times what would be allowed for the so-called end-haul statute or order basis. For instance, at Chaska, the M. & St. L. proportion from Minnesota Transfer of the through rate ranges from 24 cents First class to 5.2 cents Class E, and the rate per ton per mile from 184.6 mills to 40 mills, while the statute basis for similar distance ranges from 1.96 cents First class to .39 of a cent per

hundred pounds, Class E, and the rate per ton per mile from 15.1 mills to 3 mills. At Manchester the M. & St. L. proportion of the through rate *via* Minnesota Transfer ranges from 24 cents First class to 5.2 cents Class E, and the rate per ton per mile from 46 mills to 10 mills. The statute basis for similar distance ranges from 4.9 cents, First class, to .98 of a cent per hundred pounds Class E, and the rate per ton per mile ranges from 9.4 mills to 1.9 mills. Secondly, it shows that the M. & St. L. proportion of the through rate from junction-point (that is, Minnesota Transfer) is equal to or exceeds the statute or order basis at all points except Manchester, Waseca and Sherburne. Thirdly, Ex. 26 shows that by using the actual distance *via* the route over which shipments travel the through rate exceeds the statute basis at Hanley Falls, Boyd and Madison. At stations on the Albert Lea division the situation is affected by the "blanket" rate owing to the Minneapolis adjustment, and the through rate therefore at Manchester, Waseca, Montgomery and Chaska are lower than would be the statute basis or the order basis for similar distance. The statute or order rates are also slightly in excess of the through rates at Arlington, Fairfax, New Ulm, St. James and Sherburne.

Mr. BUTLER: Complainant's Ex. 21 is offered in evidence. The paper heretofore marked Ex. 21 is hereby, by the consent of the parties and the Master, withdrawn.

The MASTER: And the testimony heretofore given with reference to Ex. 21 is to be considered as applying to the present Ex. 21?

Mr. BUTLER: Yes, sir. And in connection with Ex. 21, and by way of explanation, the column marked 3 on the present Ex. 21 is added to the figures which were expressed on the former Ex. 21. In other respects there is no change. By way of explanation, I call the attention of the Master and counsel on the other side to the following: Ex. 21 should be read with Ex. No. 16. Ex. No. 16 shows first, the tonnage at each class

and at each combination class rate. By combination class rate I mean the rate expressed, for instance, as one-half of A, one-half of First class, one and a half times First class, etc., appearing at the left-hand margin of Ex. 21. The period covered is from April 1, 1906, to March 31, 1907. The class rates prescribed by the Commission took effect November 15, 1906, during the period covered by the exhibit. The figures in the column of Ex. 16 marked "Charges assessed at former rates," were arrived at by applying to the individual shipments which moved during the whole period the rates which were in effect immediately prior to November 15, 1906. In other words, these figures indicate the amount which the Company would have earned had the rates remained unchanged.

The figures appearing in Ex. 16 in the column marked "Charges assessed at present rates," were arrived at by applying to the individual shipments which moved during the entire period the rates prescribed in the Commission's schedule which took effect November 15, 1906; in other words, this column shows what the Company would have earned had the Commission's rates been in effect during the whole period.

The figures in the column marked "Decrease" were arrived at by subtracting the figures in the column last referred to from the figures in the next preceding column; in other words, show the difference in revenue on the individual shipments which actually moved during the period resulting from the application of the schedule of rates in question.

In Ex. No. 21 appear the same figures and information as appears in Ex. No. 16, and in addition thereto appears the rate per ton per mile at the former rate; in column marked No. 1 of that exhibit appear the rates per ton per mile at the present rates in column 3 of Ex. 21, the number of ton miles and the average distance hauled with respect to each of the class and combination class rates.

In Ex. No. 21 the rate per ton per mile at the former rate

was arrived at by dividing the ton miles into the revenue under the former rate—and a multiplication of such ton miles by the rate per ton per mile will in each instance produce practically the amount of revenue in column 7 of the exhibit.

In Ex. 21 the rate per ton per mile expressed in the column marked 2 was arrived at by applying to the average distance hauled the rate fixed by the Commissioners' order for such distance under the rule prescribed in the order; that is to say, by taking the next higher distance.

Column No. 3 is the column added in this new exhibit 21, and the figures appearing in that column express the rate per ton per mile at the present rate, and was arrived at by dividing the ton miles into the revenue at the present rate, which appears in column 8—and a multiplication of such ton miles by the rate per ton per mile will, in each instance, produce practically the amount of revenue by the present rate column.

There has been used a little different phraseology to mean the same thing. The phrase "ton miles" and "tons one mile" are equivalent one to the other.

Q. I want to make it appear, by way of example or examples in the record, how the rate per ton per mile at the average haul of different shipments of freight in the same class will not correspond with the rate per ton per mile estimated from the rate allowed by the State in its schedule for a distance equal to the average haul; and for that purpose, Mr. Tittemore, I would like to have you call attention to such examples as you are able to, showing conditions under which there would be a correspondence, and under conditions where there would not be a correspondence between the actual earned rate per ton per mile and the rate per ton per mile taken from the schedule at the average distance hauled.

The MASTER: One is an assumption and the other an actuality?

Mr. BUTLER: Yes.

WITNESS: No, they are both assumptions.

A. Well, take one ton, five miles, at 12 cents per hundred pounds, First class rate; that equals $2.40 a ton. One ton five miles, $2.40 a ton. (This is all First class). Then we take one ton First class and haul it 55 miles at the rate of 21.8 cents per hundred pounds, which makes $4.36 per ton. Your total distance is 60, your average distance is 30 miles; your total revenue on the two shipments for the 60 ton miles is $6.76. Putting your distance, 60 ton miles, into your earnings gives you a rate per ton per mile (that is, a rate for hauling each ton one mile) of 112.7 mills; and I find that that is the rate per ton per mile which would be yielded by the Commissioners' schedule for the average of 30 miles. That proves itself out, therefore, and makes a corresponding case. Now, take again the Fifth class under the Commissioners' schedule. Carry one ton 20 miles at 5.98 cents per hundred pounds; then carry one ton 180 miles at 18.52 cents per hundred pounds; in this case we have one ton hauled 200 miles, the average being 100 miles, and the rate per ton per mile, or for hauling each ton one mile, would be 24½ mills, and when I look at the Commissioners' schedule, I find that that is the average rate per ton per mile for the Fifth class for 100 miles. That, therefore, is another case where it proves out. Now, the third case I have here—well, there is no concrete case, it just says that "This comparison will hold good on all classes using the distance in the Commissioners' schedule not exceeding 200 miles." This because that up to that point the distance table is figured on an equal ratio as between the different mileages.

Q. That is to say, if you take any number of hauls of each class and no haul exceeding the 200 miles, then there will be a correspondence between the rate per ton per mile actually earned and the rate per ton per mile allowed by the Commission for the average haul?

A. Yes.

Q. That would not hold good, however, if you took shipments of the different classes, even though all were under the 200 miles and assembled them together and got your tons one mile and revenue and average haul in that way?

A. No.

Mr. DURMENT: You couldn't apply it in that case, could you? I mean by that you would have two classes mixed there, and there would be no Commissioners' rate?

WITNESS: A comparison of a rate per ton per mile (and I have figured it now for thirty years) to make a comparison valuable, must have each and every element exactly the same. You can't bring it out and have a valuable comparison unless you do it. Each and every factor that goes into it must be the same. Vary your tonnage, vary the class or the weight or the mileage or any other factor, and you cannot get an average that will compare with another schedule unless you have those exact factors in them. Now, let us see whether that is true or not.

Mr. O'BRIEN: I am willing to concede that that is true.

WITNESS: Now, when you make comparisons between mileages shown in the first 200-mile group with the longer distances, a different result is shown. For instance, take one ton—

Q. This is First class, isn't it?

A. —of First class freight five miles at the Commissioners' rate of 12 cents or $2.40 a ton; then take one ton of First class freight 390 miles at the Commissioners' rate of 68.84 cents per hundred pounds, or $13.76 a ton. We have an average of tons hauled one mile 197½, which gives us a rate per ton per mile of 40.9 mills, while the Commissioners' schedule for the average mileage (200 miles) the average in this case being 197½, the next higher Commissioners' schedule applying being 200 miles, First class, gives an average rate per ton per mile of 50.2 mills.

Q. To be compared with the 40.9 mills?

A. Yes. Then again, take Class E: Take one ton five miles on the basis of the schedule of 2.4 cents, or 48 cents a ton; then take another ton 660 miles under the Class E schedule of 16.12 cents or $3.22 a ton, and you get a rate per ton per mile of 5.6 mills per hundred pounds, while the Commissioners' schedule for the average haul of 340 miles would be 7½ mills per ton per mile. On commodities under the statute rate or the order rate no comparison of averages can be made which will result in the same rate per ton per mile compared with the statute basis for average mileage.

Q. Can you give some examples of that?

A. Take one ton of soft coal five miles, and one ton of soft coal 195 miles; the actual rate per ton per mile on the average haul is 7.8 mills, and the average distance is 100 miles, and the statute rate per ton per mile for the actual distance is 8.2 mills.

Q. That is the statute rate for the 100 miles?

A. For the hundred miles. Again, take one ton of soft coal 200 miles, figured at the statute rate of $1.16 per ton; then take one ton of soft coal 600 miles figured at the statute rate or by the extension of the statute rate, gives $1.90 per ton, and the average rate per ton per mile would be 3.8 mills, while the statute rate per ton per mile for the average distance of 400 miles would be 4.3 mills per ton per mile. Now, again, take a thousand tons of hard coal, haul it five miles, figured on the statute rate of 54 cents per ton, and then take one hundred tons and haul it 55 miles at the rate of 81 cents per ton; we have an average rate per ton per mile of 59.01 mills. Now, you see the average distance hauled of 9.54 miles, the statute rate per ton per mile for 10 miles, or the next higher distance, would be 62 mills per ton per mile.

Q. Now, what has been illustrated by the examples which you have just taken and given would also hold true with respect to the other commodities or classes of commodities de-

fined in the act of the legislature, Chapter 232, would it not?

A. Yes, sir.

Q. I have noticed in Exhibits 23, 24, 25 and 26 the range expressed in mills per ton per mile of the earnings of the Company contained in the proportions, ranging in some instances from over 600 mills per ton per mile perhaps down to 10; I want to ask you whether, in your opinion, if there be taken into account these twenty-two different rates evidenced on Ex. 21 and the different rates specified in the commodity act, Chapter 232, or taking those that are actually in effect, the average rate per ton per mile earned upon the traffic as a whole, or upon any group of classes of traffic, would be of any value in determinin[illegible] reasonableness of the rate.

A. No way that I can figure it out. It would not be reasonable to me, nor would I know how to make it reasonable nor to prove the reasonableness of it.

Q. In other words, if the traffic of a given carrier consisted of low classes and long hauls, the rate per ton per mile would be low?

A. Yes, sir.

Q. And if it were short hauls and high traffic, the rate per ton per mile would comparatively be very high?

A. Yes, sir.

Q. And when the rate per ton per mile derived from each class of traffic upon each rate and each separate haul be all assembled together, is it not, as a practical matter, impossible to give it any value whatever in determining the reasonableness of a rate?

A. In my judgment it is.

The MASTER: No relation between the elements that make it up?

WITNESS: None whatever.

Mr. BUTLER: We offer a paper under the following caption, to-wit: "The Minneapolis & St. Louis Railroad Company.

POOR COPY

Statement showing the loss which the Minneapolis & St. Louis Railroad Company would have suffered by the application of the Minnesota Statute Commodity Rates to the tonnage handled during the period July 1, 1905, to June 30th, 1906, inclusive, based on the rates in effect after voluntary reductions had been made. Reference to Column A. Also showing the loss which the Minneapolis & St. Louis Railroad Company would have suffered by the application of the Minnesota Statute Commodity Rates to the tonnage handled during the period July 1st, 1905, to June 30th, 1906, inclusive. Reference to Column 'B'." The Exhibit deals separately with the following commodities, to-wit: Soft coal, hard coal, wheat and flour, lumber, coarse grain, flax and millet, cattle, hogs, sheep, and shows, with respect to each, ton miles, tonnage in pounds, earnings, loss "A" (as referred to in the caption) loss "B," percentage of loss "A" and percentage of loss "B," with respect to Minnesota state business affected, Minnesota state business not affected, Minnesota interstate business affected, by one or the other of the factors used to produce "A" or "B"; Minnesota interstate affected by one or the other, as the case may be, of such factors; Minnesota interstate business not affected; other interstate business affected; other interstate business not affected. With respect to coal and similar subdivisions, all where necessary to show the facts with respect to the other commodities, and we ask that this be marked Complainant's Ex. 14-A; it is supplementary to that exhibit, and we deemed it desirable to go to the trouble of preparing an exhibit in view of questions asked by counsel and the Master touching that exhibit during the cross-examination of this witness and of the witness Mr. L. G. Scott. The exhibit consists of seven pages.

Adjourned until Friday, October 9th, at 10 A. M.

FEDERAL BUILDING, St. Paul, Minn., October 9, 1908, the hearing was resumed at 10 A. M.

JAMES N. TITTEMORE,
recalled on behalf of the Complainant, testified.

By Mr. BUTLER:

Mr. BUTLER: In connection with the Ex. 14–A–Tittemore, we desire to offer in evidence an explanatory statement or note, which if attached to the exhibit will aid in the examination of it and the comparison of Ex. 14 with Ex. 14–A. I think it would aid in the examination if the note be read now, and the Master may follow the statement as I read the note if you wish, and I think it would give an understanding so that questions may be asked: "Column 'A,' revised exhibit, represents the loss from the voluntary-rate basis to the statute-rate basis." By that is meant the last step of reduction, the so-called "voluntary reduction" following the action of the northern roads. In the autumn of 1906 there were certain adjustments of rates made, and this difference, showing $1,429.52, is the result of the application of the rates prescribed in the statute, assuming they had been in force for the year,—

The MASTER: That is, for six months prior to that time?

Mr. BUTLER: —as compared with the revenue which would have been derived from rates after voluntary reduction had been made. "Column 'B' represents the loss from the rates in effect on which the business moved to the statute-rate basis," the voluntary reduction having been made after the period covered by the exhibit. "When the original figures were prepared, the traffic department furnished the basis in cents per hundred weight and in cents per ton for the compilation of the losses on interline and interstate movements considering in the figures the rate reductions which had voluntarily been made prior to March 31, 1907."

To the intrastate local business the commodity statute rates,

as furnished by the traffic department, were applied direct to the tonnage figures prepared from the reports secured from the agents, and the losses arrived at. No voluntary rate reductions were considered on intrastate local business. This explains the differences in losses as shown on the original exhibit and the revised exhibit, Column 'B.'

"SOFT COAL. The losses shown under the original exhibit and under the revised exhibit column 'A' remain the same, as practically all of the movement of soft coal traffic for Minnesota is of an interline nature."

And I understand that expression to mean movements by two roads, as for example, the Northern Pacific from Duluth to Minnesota Transfer and the Minneapolis & St. Louis from the Transfer to points on its line.

The MASTER: It might not be interstate, it is interline?

Mr. BUTLER: Yes, it might or might not. The shipment of the character that I just mentioned would be interline, intrastate, if it came by the Northern Pacific road. If it came by the Omaha road or the Great Northern road, it would be interstate.

"The increase of $8,917.42 in earnings, Minnesota interstate, is caused by including in the revised exhibit figures on which there was a loss figured from the basis on which the business moved to the column 'B,' but no loss figured from column 'A' to column 'B,' there being no reduction from the voluntary to the statute basis.

"HARD COAL. The losses shown under the original exhibit and under the revised exhibit column 'A' remain the same, as practically all the movement of hard coal traffic for Minnesota is of an interline nature." (That is to say, all hard coal traffic on the line of this Company, of course.)

"The increase of $391.03 in earnings, Minnesota interstate, is caused by including in the revised exhibit, figures on which there was a loss figured from the basis on which the business

moved to column 'B,' but no loss figured from column 'A' to column 'B,' there being no reduction from the voluntary to the statute basis.

"WHEAT AND FLOUR. The decrease of $118,903.44 in earnings, Minnesota intrastate, is explained as follows: A decrease of $116,171.42 is caused by having included in the original exhibit earnings on shipments of wheat 'billed to milling stations to be converted into mill product and forwarded to points without the state,' as Minnesota intrastate traffic, whereas in the revised exhibit this traffic appears as Minnesota interstate traffic."

The MASTER: Those figures that you have just given I don't find here.

Mr. BUTLER: Those are differences arrived at by comparison of Ex. 14 with Ex. 14-A. This is not an explanation of the figures, but of the differences.

The MASTER: That is, to understand this, I have to take both these exhibits and have them before me?

Mr. BUTLER: Yes.

Mr. O'BRIEN: They have given two figures for the same item, and he is explaining what the difference is.

Mr. BUTLER: The effect of this last item was that they included certain business in intrastate which they now include in interstate. That business is business "billed to milling stations to be converted into mill product and forwarded to points without the state." An example of such billing would be wheat purchased at Minneapolis by a miller at New Prague to be hauled to New Prague and milled and the product sent on to Chicago or elsewhere outside of the state, and that class of business was called in the first exhibit intrastate and now it is called interstate.

"A decrease of $528.93 is caused by having compiled earnings on transit shipments at erroneous rates, compilations being originally based on Minnesota distance tariff rates, actual

distance point of origin to milling station, whereas the revised exhibit bases the earnings on milling-in-transit rates, point of origin to Minneapolis.

"The balance of the difference, or $2,203.09 is caused by having included in the original exhibit the total freight charges on a number of shipments of interline received freight, whereas only the Minneapolis & St. Louis proportion of the earnings should have entered into the results.

"The difference of $27,815.90 (decrease) between the original exhibit and the revised exhibit column 'A' is explained as follows: A difference of $11,484.88 is caused by the loss on the original exhibit having been computed from the rates on which the business moved to the statute rates, (with the exceptions as noted above) whereas the loss on the revised exhibit is computed from the voluntary reduction to the statute basis.

"A difference of $16,331.02 is caused by having included in the original exhibit earnings on shipments of wheat 'billed to milling stations to be converted into mill product and forwarded to points without the state,' as Minnesota intrastate traffic, whereas in the revised exhibit this traffic appears as Minnesota interstate traffic.

"It is noted that there is a difference between the loss as shown on the original exhibit and the revised exhibit column 'B,' Minnesota intrastate, of $20,218.28.

"$18,342.75 (decrease) of this amount is the result of having included in the original exhibit shipments of wheat billed to milling station as Minnesota intrastate traffic as explained in the second preceding paragraph.

"$1,880.53 (decrease) of this amount is caused by revising the loss on the transit shipments to basis of the milling-in-transit rates applicable to the traffic, point of origin to Minneapolis, whereas originally the loss was based on Minnesota distance tariff rates.

"$5 (increase) of this amount is caused by original loss hav-

ing been computed on interline forwarded business, voluntary reductions to statute basis, whereas the revised exhibit computes the loss from rates on which the business moved to the statute basis.

"The increase of $116,171.42 in earnings and $16,331.02 in loss, Minnesota interstate is caused by having included in the original exhibit shipments of wheat 'billed to milling stations to be converted into mill product and forwarded to points without the state,' as Minnesota intrastate traffic, whereas in the revised exhibit this traffic appears as Minnesota interstate traffic.

"LUMBER. No change from original exhibit to revised exhibit column 'A.'

"COARSE GRAIN. The difference of $8,895.87 (decrease) Minnesota intrastate between the original exhibit and the revised exhibit column 'A' is caused by the loss on the original exhibit having been computed from the rates on which the business moved to the statute rates, whereas on the revised exhibit the loss is computed from the voluntary reductions to the statute basis.

"FLAX AND MILLET. Difference of $1,908.67 (decrease) Minnesota intrastate. The same explanation applies to this table as to coarse grain.

"CATTLE, HOGS AND SHEEP. No changes from original exhibit to revised exhibit column 'A.'

"The detail of this exhibit was prepared from figures secured direct from the various stations.

"All agents were required to prepare abstracts of the commodities indicated for the period named, showing the movement of each of the commodities from station to station, being also required to furnish tonnage and earnings figured on basis of the business actually handled.

"Detailed statements of such movements were then prepared and the actual earnings of the Company arrived at.

"To the tonnage figures the rates prescribed by the commodity act were applied and the loss in revenue to the Company arrived at.

"On Minnesota intrastate business the commodity statute rates as shown in Chapter 232 were applied to the tonnage figures and computations made. On interstate business the computations were based on figures furnished by the traffic department.

"Prior to March 31, 1907, the Company made certain voluntary reductions on certain commodities.

"Column 'A' of this exhibit represents the loss the Company would have sustained, had the rates resulting from the voluntary reduction been further reduced to the statute basis.

"Column 'B' of this exhibit represents the loss the Company would have sustained had the rates which were in effect during period July 1, 1905, to June 30, 1906, inclusive, and on which the business was actually handled, been reduced to the statute basis." (Then follows an example.)

"Example:—The tonnage of coarse grain moving from Madison, Minnesota, to St. Paul, Minnesota, for a period of six months was 901,000 pounds, at a rate of 10.5 cents per hundred weight, earning $946.07. A voluntary reduction in the rate between these two stations was made of one cent per hundred weight, and a further reduction to basis of the statute rate of 7.9 cents per hundred weight would have reduced the earnings 1.6 cents per hundred weight, or $144.16, which amount is carried to column 'A' of this exhibit.

"To the same movement of freight earning under rates on which it moved 10.5 cents per hundred weight or $946.07, the application of the statute rate of 7.9 cents per hundred weight would have reduced the earnings 2.6 cents per hundred weight, or $234.26, which amount is carried to column 'B' of this exhibit."

I think Ex. 14–A and the note attached have been offered in

evidence. I offer in evidence Ex. 14–A and the note attached.

Mr. O'BRIEN: Between the 30th of June and the 6th of September, 1906, a voluntary reduction was made in grain rates.

Mr. BUTLER: That wasn't the time. I intend to offer the statement of the Commission in evidence on that, Mr. O'Brien.

Mr. DURMENT: They went into effect later?

Mr. BUTLER: In grain and coal both. Have you the report of the Commission here for 1906?

Mr. O'BRIEN: Well, I will change that so we don't need the exact date.

The MASTER: When you speak of voluntary reduction, you have reference to the action of the Company?

Mr. O'BRIEN: Yes, that is what I was trying to explain. The facts are these: During the time the Commission was engaged in examining freight rates the railroad companies of the state made a proposition to them that they would make a reduction of I think something in the neighborhood of 10 per cent. on wheat and coal rates, and asked that the further investigation of merchandise rates be suspended. The offer was refused; and following the refusal the companies made the voluntary reduction without any condition.

The MASTER: On wheat and coal?

Mr. O'BRIEN: On wheat and coal rates, and my understanding is that that was made shortly before the making of the order on merchandise rates, but it may have been within a few days after that. I think it was between the 30th of June and the 6th of September that this voluntary reduction was made. Now, in Ex. 14, when they came to determine the loss caused by Chapter 232, which was passed in April, 1907, it made, of course, a further reduction, made a reduction below the rates fixed by the voluntary act of the companies, as I have explained, on wheat and coal, and when Ex. 14 was prepared they took the prior year's business, the business for the year ending June 30, 1906, and in stating the loss caused by

Chapter 232 they used the old rate and found the difference between the old rate and the rates provided by Chapter 232,—

Mr. BUTLER: As to intrastate business.

Mr. O'BRIEN: —ignoring the voluntary reduction. The truth being that between the time that this business was done upon which the loss was computed and the passage of Chapter 232, the rates had been changed on these two commodities, so that the entire loss computed could not be caused by Chapter 232. Now, in Ex. 14–A, as I understand it, the correction is being made, and the computation is being shown; first, the difference in revenue between the rates which were actually in force during the year ending June 30, 1906, and the earnings which could have been made under the new rates put in force by the voluntary act, and the loss or the difference.

The MASTER: One takes the situation exactly as it was; a part of the time the old rate, and then there was the reduced rate voluntarily made?

Mr. O'BRIEN: Yes.

The MASTER: And they took that condition just as it was; that was the exact history of the business of that year. Then they come along and make the comparison between the voluntary rate and the statutory rate for the whole year?

Mr. O'BRIEN: No, make a comparison between the voluntary rate and the actual rate which was in existence, and between the statutory rate and the rate which was actually in existence.

The MASTER: Well, it covers the whole year?

Mr. O'BRIEN: It covers the whole previous year. Isn't that it, Mr. Butler?

Mr. BUTLER: I will try to state it as I understand it. Mr. O'Brien's statement is inaccurate in one or two respects, I think. He hasn't had time to examine Ex. 14–A carefully and the note, and as touching on this I offer in evidence from the report of the Commission for the year 1906 the following, found on pages 28 and 29 of the report:

"Reduction in grain rates. On August 18, 1906, the Commission received a joint application from the Great Northern, Northern Pacific and Soo Railways for permission to reduce their rates on grain in Minnesota, approximating 10 per cent, to the terminals from points more than 50 miles distant from the terminals, taking effect September 1, 1906. On August 20, 1906, the Commission advised the companies granting authority to make the reductions and to put in the rates as outlined above, with the understanding that said reductions would in no way interfere with the pending investigation by the Commission as to the reasonableness of the grain rates in this state. Tariffs were filed showing the reduced rates, and the same became effective September 1, 1906.

"REDUCTION IN COAL RATES. On September 15, 1906, application was received from the Northern Pacific and Soo Line Railways, respectively, asking the consent of the Commission to reduce the rates on hard and soft coal from the terminals of Duluth, Minneapolis, St. Paul and Minnesota Transfer, to points in Minnesota, which was granted on September 18, 1906, with the distinct understanding that said reductions would in no way interfere with the pending investigation by the Commission as to the reasonableness of the coal rates in this state. The Great Northern Railway Company was a party to this agreement, but did not file an application on account of their business being interstate. The tariffs were filed with the Commission showing the reduced rates, and went into effect on October 22, 1906."

And in the same connection, I offer in evidence from the same report, page 11 thereof, containing a statement of the Commission to the Legislature with respect to the reduction of merchandise rates:

"Communication to the Legislature. Report on Rate Reductions. Although the annual report usually includes no record beyond the 30th of November, the date for closing each year's

report, the issuance of their order on December 14, 1906, by the Commission reducing commodity rates, has prompted them, in view of its importance, to include it in this report. The Commission has also prepared a brief report of its labor under Chapter 350, General Laws of 1905, which is hereto appended, and will be submitted to the legislature at its forthcoming session:"

"To the senate and house of representatives of the state of Minnesota: Gentlemen: The Railroad & Warehouse Commission would respectfully report briefly the results of the work accomplished under Chapter 350, General Laws of 1905, being the joint resolution requesting the Commission to take up the question of reasonable freight rates in the state of Minnesota, particularly the class rates. A careful investigation into the question has been made to determine the reasonableness of the rates, both class and commodity, and also to find what seems to be the fairest plan to adopt in making a schedule of rates, both as to railway companies and the people, resulting in an order made on September 7th, 1906," (that, I think, is the order of September 6th that we always refer to) "reducing class rates from 20 per cent to 25 per cent. This order became effective November 15th, and has been accepted by the railway companies, and the people of the state are now enjoying the benefits of the same.

"On December 14, 1906, a second order was made, reducing commodity rates on the principal agricultural products, including coal and lumber. The reduction averaged from 10 per cent to 28½ per cent, the percentage of reduction varying on the different commodities, and is in addition to the reduction made on coal and grain in November last. This order will be effective January 26, 1907, and will result, in the opinion of the Commission, not only in a great saving to the people of the state in freight charges but also in securing to the people a schedule of rates which is equitable and fair to all parts of

the state and will remove all ground for reasonable cause for complaint of discrimination between localities, the aim being to give all a fair show.

"The full benefits to the public can only be appreciated by a careful and thorough examination of the new schedules, comparing them with the old ones. In connection with this work the Commission is conducting the work of having the railway properties in the state valued as a basis for determining what are reasonable earnings for the various companies. Your closest scrutiny and examination of these orders and schedules and a consideration of the operation and effect thereof is desired by the Commission."

Now, Mr. O'Brien's explanation was inaccurate insofar as it included (if it did so include) the statement that the Minneapolis & St. Louis Company applied to the Commission for leave to reduce rates on grain or lumber at the time referred to,—

Mr. O'BRIEN: Grain or coal.

Mr. BUTLER: Grain or coal—the fact being that the northern roads made what has been referred to in our papers and our testimony here as the voluntary reduction. Certain reductions were compelled on the line of the Minneapolis & St. Louis road by reason of the voluntary reductions of the northern roads—to which reference was made at considerable length by Mr. Tittemore in his testimony on cross-examination.

Mr. DURMENT: Reductions were in fact made, at the time stated by Mr. O'Brien, by the Minneapolis & St. Louis, without any order of the Commission or legal compulsion, simply the compulsion of competition, if anything.

Mr. BUTLER: Well, I think that is legal compulsion. Now, with respect to Ex. 14-A, it covers the period from July 1, 1905, to June 30, 1906, before any of the reductions referred to became effective. After the voluntary reductions by and on the northern roads, the Minneapolis & St. Louis, in order to

maintain rates on its line with respect to grain and coal which would be relatively fair and just, were compelled, by reason of competitive conditions, to make certain reductions. Following that and down to the present time, the schedule, so modified as a result of the voluntary reductions in the north, continues in effect with respect to the commodities in question—grain and lumber. Ex. 14–A aims to show, first, the earnings at the rates on which the business actually moved; it further aims to show the loss that would have resulted to the Company had the rates as modified in consequence of the voluntary reductions on the northern roads been in force during the fiscal year ending June 30, 1906.

Mr. O'BRIEN: And that is Column A?

Mr. BUTLER: That is Column A, yes, as I understand.

The MASTER: That is, the voluntary reduction spread over the year on the business actually done?

Mr. O'BRIEN: Yes.

Mr. BUTLER: No, that is not as I understand it. Column A shows the difference between the revenue which would have been earned had the rates attacked been in effect and the revenue which would have been earned had the voluntary rates been in effect. In other words, it compares the revenue derived from the rates now in effect with the revenue which the rates in the attacked schedule would produce. Loss in Column B is intended to show the difference in revenue between that which was actually earned by the rates in force before the voluntary reductions, so-called, were made—

The MASTER: Spread over the whole year?

Mr. BUTLER: The whole year,—and what would have been earned had this statute which has been enjoined been in effect during that year, the purpose being to show the loss on both bases of comparison; and from the face of the exhibit is derivable, with respect to each commodity and with respect to each class of traffic in each commodity, the earnings as they

actually were, the earnings as they would have been had the voluntary rate, so-called, been in effect, the earnings as they would have been had the statute been in effect. The actual earnings are expressed and the differences shown—

The MASTER: Well, the actual earnings would include—

Mr. O'BRIEN: Not on that statement of yours.

The MASTER: The actual earnings would include both the voluntary reduced rate and the previous rate?

Mr. BUTLER: No, the voluntary reduction was not made until the close of the year.

The MASTER: Oh, that is true.

Mr. BUTLER: Now, again, (that there may be no misunderstanding as to what I said last,) the exhibit shows the earnings before rate disturbance of any kind; it shows the loss that would have resulted by applying the statute rate and comparing it with the rates in effect; that is, including, if you wish to express it so, two steps: It also shows the last step, the loss that would have resulted had the voluntary rate (so-called) been in effect that year compared with the statute rates; in other words, the actual earnings are shown, the losses resulting on the different bases are shown, and it is derivable from this statement to show with respect to each commodity and each class of traffic in each commodity what the earnings were, what the earnings would have been had the voluntary schedule (so-called) been in, what the earnings would have been had the statute been in, expressed in earnings actually made and in the differences.

Mr. O'BRIEN: Now, Mr. Butler, see if I can state this correctly. In Ex. 14–A, the column under the head "M. & St. L. Earnings" represents the actual earnings of the Company—

Mr. BUTLER: On the commodity and class traffic.

Mr. O'BRIEN: —on the commodity and class traffic mentioned for the year ending June 30, 1906.

Mr. BUTLER: Yes.

Mr. O'BRIEN: The column marked "Loss B" shows the claimed amount which the Company would have lost in that item had the rates prescribed in Chapter 232 been in effect during the period covered.

Mr. BUTLER: And compared with the rates which were actually in effect.

Mr. O'BRIEN: Well, I say if these rates had been in effect during the period covered.

The MASTER: That is, the actual business?

Mr. O'BRIEN: The actual business, yes. And "Loss A" shows the amount claimed which would have been lost if the business had been conducted on the rates prescribed in Chapter 232 computed upon the theory that the old rates were those voluntarily put into effect September 1st?

Mr. BUTLER: Yes.

The MASTER: That is right.

Mr. O'BRIEN: Consequently, if we deduct "B" from earnings, we have what is claimed the total loss?

Mr. BUTLER: No, we would have the earnings under the statutory rates.

Mr. O'BRIEN: Under the statutory rates. Well, if we add to those earnings—

Mr. BUTLER: Under the statutory rates—

Mr. O'BRIEN: —under the statutory rates the difference between "A" and "B"—

Mr. BUTLER: No, "A"—If you add "A" you have what the earnings would have been under the voluntary rate.

Mr. O'BRIEN: Of course, if they had put in another column here we would not have this trouble at all; if they had put in what the earnings had been under the voluntary rates.

Mr. BUTLER: We have been putting in columns and columns and columns. We will put in more if you want them.

Mr. O'BRIEN: That is a column that should have been in there.

The MASTER: Mr. Butler, the business is fixed—

Mr. BUTLER: Yes.

The MASTER: The business is the same, that is, the amount of business?

Mr. BUTLER: The tonnage and where it moved.

The MASTER: The tonnage, etc., is the same for all these calculations. Now, "Loss A" is the difference between the amount which would have been received on that business if the voluntary rate had been in effect and what would have been received on that business if the statutory rate had been in effect?

Mr. BUTLER: Yes, sir.

The MASTER: And "Loss B" is the difference between what was actually received for the year and what would have been received if the statutory rate had been in effect?

Mr. BUTLER: That is it.

The MASTER: I have got it now, haven't I?

Mr. O'BRIEN: That is right.

The MASTER: You used the word "voluntary" because you assumed that would be first, and that would probably be the proper comparison, of course, because if you put it down voluntarily then your comparisons should be between that and the statutory rate?

Mr. BUTLER: Yes. Then one other matter, that we may have it all clear: There were also certain interstate adjustments and reductions made necessary by the so-called voluntary rates. In computing the original Ex. 14, on all of the interstate shipments the rate figured was the actual rate; that is, comparison was made between the rates as they are after the voluntary adjustment and as we claim they would have to be if the statute were in force in Minnesota. The statement was general as to all, but that is also explained in the note attached.

Q. Now, Mr. Tittemore, the Minneapolis & St. Louis Rail-

road Company did not, during any of the time in question, make any application to the Commission for permission to reduce its rates on coal or grain, as did the northern roads, so-called?

A. No, sir.

Q. And the reductions which have been spoken of as "voluntary reductions" here were voluntary by the roads applying for the permission?

A. That is my understanding.

Q. What is the fact in that regard as to your road, why did it change?

A. It changed its rates in competition with the other roads. Take, for instance, a rate changed by the Great Northern road from Hanley Falls to Minneapolis: their voluntary reduction would compel us to make the same rate from Hanley Falls to Minneapolis on wheat.

Q. That is, the Great Northern road cuts your road at Hanley Falls?

A. At Hanley Falls.

Q. And the change of the rate from Hanley Falls to Minneapolis and Duluth on the grain in question made necessary certain changes on your road in order to correspond with it?

A. That is correct.

The MASTER: Where does that Great Northern run from Hanley Falls to Minneapolis?

Mr. BUTLER: It cuts off *via* Willmar.

Mr. O'BRIEN: It comes in on the old St. Paul & Pacific—that you may have heard of!

Q. Were any more rates reduced on the line of your road than was made necessary by reason of the reductions on the other lines?

A. No, sir; we minimized the destruction on our road just as far as possible.

Q. Now, with respect to the tons affected (and I will in-

vite the Master's attention to the tonnage of soft coal) of the "Minnesota state affected," which means Minnesota intrastate business affected; there are 388,122 ton miles, and of the "Minnesota state not affected" by this statute the statement shows there would be 6859 ton miles. Now, what particular movement of soft coal would not be affected as to the rate by the application of this statute on your line, intrastate business?

The MASTER: You say Minnesota state not affected?

Mr. BUTLER: Yes; that means the intrastate business in Minnesota. I am trying to find out why it would not affect it all.

A. In a case of a shipment of coal, for instance, from Duluth going to Hopkins, Minnesota, on our road,—there is no through tariff, for instance, from Duluth to Hopkins; we have a special tariff, made years ago,—you may call it a switching tariff, it does not read as a switching tariff but it is a special tariff—from Minneapolis to Hopkins, upon which an arbitrary rate is made. I don't remember at the moment whether the rate was $5 a car or 1¼ cents per hundred pounds, but, at any rate, the rate from Minneapolis to Hopkins is considerably less than the statute rate would have been, therefore it would not be changed and the tonnage under that item not affected. We don't want to stand for the tariff from Minneapolis to Hopkins, in any way, shape or manner, because we have undertaken to get it out, but the Commission have denied our right to cancel the rate and we have kept it in for that reason; but the shipments from Duluth to Hopkins would be handled on our rate from Minneapolis. I want to correct myself a little on that, I want to say that we do have a through rate from Duluth to Hopkins.

The MASTER: In short, on your line there are certain hauls where your previous rate was less than what the statute allowed?

WITNESS: That is it exactly.

Q. With respect to soft coal is there any other on the whole line that you can now think of?

A. No.

Q. So from Minneapolis to Hopkins is the only part of your line on which the rates with respect to soft coal would not be destroyed?

A. That is so.

Q. That is nine miles from Minneapolis?

A. Nine miles from Minneapolis.

Q. And the rate in now is less than the ten-mile allowance in the act?

A. That is it.

Q. But the act also provides that you cannot raise it where it is lower than the rate prescribed in the act?

A. That is it.

Q. And the Commission won't let you raise this?

A. They have denied our petition.

Q. If that rate imposed any additional loss, you couldn't get up to their basis?

A. That is it.

The MASTER: You look at it somewhat as a switching charge?

WITNESS: That is it, switching revenue.

Q. The amount of tonnage from Minneapolis to Hopkins, as indicated by this exhibit, would be about 700 tons, and I see the ton miles are 6859. Divide that by 9 and there would be between 700 and 800 tons?

A. Yes.

Q. Now, of the Minnesota interstate not affected there appears to be 13,514 ton miles. Can you give us any illustration of specific interstate rates that would not be necessarily destroyed by the enforcement of this state rate?

A. Yes, take that whole item of 13,514 ton miles: that is a shipment of soft coal from Ashland, Wisconsin, to Hopkins

of 163,000 pounds and it is not affected because of the shipments being handled on an arbitrary rate from Minnesota Transfer to Hopkins at less than the statute rate; under the provisions of the statute the rate would not be changed, therefore the earnings on a shipment of that nature is not affected.

Q. Now, other interstate not affected: I see there are 416 ton miles; it looks about like a carload ten or fifteen miles; have you looked that up?

A. I have not looked it up.

Q. You have not looked at the original shipment items to get at that?

A. I didn't look it up. That is, I can't remember it. Excuse me, that is "other interstate not affected"—I know just what it is. I can't give the exact car or the stations, but it is made up of a car of interstate coal that would go to Minneapolis or that might go to any other point on the Minneapolis & St. Louis road in Minnesota. Under our practice, in interstate traffic we have points where coal may be held for reforwarding, and the provision in the tariff or the practice fixes it so that upon an order received from the shipper to forward that car to another destination it takes the addition in the rate; or, possibly, if the rates to the two destinations are the same, the rate would be the same; and in some cases perhaps there would be a $2 charge made for the extra service or labor in rebilling the car; and that is what that item of 416 ton miles is made up of; it is an interstate shipment, but it actually made a state haul after it was received at its first destination. For instance, the Clark Coal & Coke Company, of Peoria, ship a car of soft coal from Peoria to Belview, Minnesota; the car is held there; when they ship it from Peoria they do not know to whom it is going; they consign it to themselves or to their agents; when it arrives there they find their salesman has sold it to a dealer at Boyd. Now, the rate from Peoria to Belview is $1.80 a ton, the rate from Peoria to Boyd is $1.90 a ton; so the agent at Belview

would be instructed or authorized to bill the car of coal from Belview to Boyd at the difference in the rate—10 cents per ton—which constitutes the state haul, but it is in reality an interstate shipment, and that is how that item comes there, one car crept in in that way.

Q. Now, with respect to hard coal, I observe in the Minnesota intrastate tonnage not affected an item of 274 ton miles; do you know what that is?

A. That item of 274 ton miles consists of a shipment of hard coal, a car of hard coal, 42,100 pounds, from Duluth to Hopkins, and the rate applied on that hard coal was an arbitrary rate. That shipment did not travel on a through bill but the shipment from Minneapolis to Hopkins was handled under the same tariff that was referred to in the case of the soft coal, an arbitrary tariff or sort of switching rate which was less than the statute basis.

Q. Now, with respect to the Minnesota interstate hard coal not affected, there is 128,518 ton miles?

A. That item of 128,518 ton miles is composed of shipments of coal, and I will illustrate it like this: In that item is included shipments of hard coal from Green Bay, Wisconsin, over the Northwestern road, *via* Waseca, destined to Waverly, South Dakota; the rate is not affected. Another item would be a shipment of hard coal coming from the Omaha road to us at Minnesota Transfer from Superior, and another shipment coming from Ashland on the Wisconsin Central road to our road at Minnesota Transfer, going to Watertown, South Dakota, and the rates are not affected.

Q. Now, with respect to wheat and flour, I find of the Minnesota interstate not affected 16,918,415 ton miles, expressed in pounds moved, 393,752,810, and I find in the note, the statement, (by reference to this,) that it includes 189,375,835 pounds of wheat billed from Minneapolis to milling stations to be milled for Chicago and common points, and also 195,848,042 pounds

of flour billed from Minneapolis to eastern territory. Will you explain how it is that the rate from Minneapolis to Chicago and eastern territory on wheat or flour will not be affected by the enforcement of the statute?

A. Well, in the first place, the rates from Minneapolis to Chicago, or from Minneapolis to Chicago junction-points, as terminals or as parts of rates applicable to business beyond, is not in any way affected by the statute. The first item of 189,375,835 pounds of wheat, would, say, originate at Minneapolis and be shipped to New Prague, Richland or Montgomery on our road, there taken into account at the rates to Chicago; after the wheat had been milled and put into flour it would be shipped out to Chicago. That is included in the item "Minnesota interstate not affected." The second item, of 195,848,042 pounds of flour, would be flour actually made or manufactured in Minneapolis out of wheat received in Minneapolis, and we would solicit, receive and ship the flour from Minneapolis to eastern territory *via* Chicago, *via* Chicago junctions, Peoria, or Peoria junctions, or any other points named in the tariff through which traffic naturally goes, and that would not be affected for the reason that the rate on flour from Minneapolis to Chicago, either local or as a part of a through rate, was in no way affected by this statute basis.

Q. That is to say, the statute could be enforced locally in Minnesota without the disturbance of the grain and flour rate between the Twin Cities and Chicago?

A. Yes.

Q. Now, there is an item of 11,546 ton miles of other interstate wheat and flour not affected; have you made examination of the original business sufficiently to enable you to tell about that?

A. No, I did not.

Q. With respect to lumber, there is certain tonnage not affected; have you gone into that?

A. I think I did.

Q. There are certain local lumber Minnesota state rates not affected, 456,476 ton miles.

A. One of the shipments would be 63,400 pounds of lumber from Cohasset, Minnesota, going to Hopkins, received by us from the Great Northern railway at Minnesota Transfer.

Q. Cohasset is on the line of the Great Northern—up in the lumber country, is it?

A. Yes, sir.

Q. And Cohasset, shipping to Hopkins, would be *via* the Great Northern and your line?

A. Yes, but it would be billed to Minnesota Transfer and the shipment would take an arbitrary rate under the special tariff that I have heretofore referred to in my testimony.

Q. Like the coal matter?

A. Like the coal, but possibly another figure.

Q. Yes.

A. Yes, it might vary a little; I don't remember whether it is $5 a car or 1½ cents per hundred pounds. 1¼ cents per hundred pounds is correct, I think. Then there is another item, of 144,300 pounds—

Q. We have been speaking of ton miles—

A. Yes, but they are included in those ton miles. Then another item in the item of lumber ton miles, (referred to by counsel,) would be 144,300 pounds from Milaca, Minnesota, a point on the Great Northern—and from Park Rapids, Minnesota,—a point on the Great Northern,—and from Akeley, Minnesota, —a point on the Great Northern,—to Chaska, Minnesota. Our joint arrangement with the Great Northern railway (which line delivered this business to us at Minnesota Transfer) gives the Minneapolis & St. Louis Railroad for its haul from Minneapolis to Chaska one cent less than its local rate from Minneapolis. Now, the Minneapolis-Chaska rate would not change by operation of Statute 232, therefore the division of the rate

does not change and the earnings are not affected.

Q. Would not be increased or diminished?

A. No.

Q. Now, with respect to Minnesota interstate not affected, there seems to be 14,772,604 ton miles of that class of lumber traffic.

A. In that case there was no reduction actually figured; that is, we figured no reduction because we could not figure a certain reduction, we didn't know exactly what it would be, therefore, not knowing what it would be we didn't figure it at all and we left it out of our calculations, although I believe there is a reduction on some of the tonnage.

Q. That is to say, if the statute were in force, can you say that you would be able to keep that amount of that class of lumber traffic at its present rate, or do you think you would have to reduce some or all of it?

A. We would have to reduce some, but it was not clear to us what that reduction would be, therefore it was not figured.

Q. So you considered it not affected?

A. Not affected.

Q. And is that also true of the other interstate not affected in lumber 459,749 ton miles?

A. Yes, sir.

Q. Now, with respect to coarse grain, Minnesota interstate not affected, 10,480,539 ton miles or 192,929,920 pounds—referred to in the note that this includes 191,655,550 pounds of coarse grain billed from Minneapolis to eastern territory—is that a shipment from Minneapolis *via* Chicago?

A. Yes, sir.

Q. And your position is that the Twin City-Chicago rate on coarse grain could be maintained and the statute rates enforced locally in Minnesota?

A. Yes, sir.

Q. Have you made examination to explain the tonnage not affected on the cattle?

A. I did on flax but not on cattle.

Q. There is very little of it—$336 worth of earnings. Do you know what that would be on the flax and millet?

A. Well, that item of 74,431 ton miles of flax was a shipment from Minneapolis to St. Louis and East St. Louis, and one of the shipments traveled over the Iowa Central to Peoria and was delivered to the Alton and went to East St. Louis, and the other item went to St. Louis proper *via* Albia, Iowa, and the Wabash road, and the rates from Minneapolis to St. Louis and East St. Louis would not be affected by the operation of the Minnesota statute, no more than the Chicago or Chicago junction-points would be.

Q. Did you examine as to cattle?

A. I didn't have time. I remember the items, but I didn't have time to take them down.

Q. Now, as I understand it, the data at hand in the custody of Mr. Scott, the Auditor of the Company, and which has been here before the Master on one or two occasions, will disclose each individual shipment making up the aggregate number of pounds or tons, and, worked into the distance that each shipment moved, will make up the aggregate number of ton miles against each commodity and class of traffic in each commodity referred to on Ex 14–A; that is to say, by examination of the details the tonnage and ton miles in each instance may be disclosed?

A. That is correct.

Mr. BUTLER: I would be glad to have counsel on the other side, either personally or by their accountants, make such examination of the details of the data from which the exhibit is made as they desire to make to verify these figures as to the amount of tonnage and ton miles of each commodity, and each class of traffic in each commodity, whether interstate or intrastate, whether affected or not affected. (Recess until 2 P. M.)

AFTERNOON SESSION.

Q. What is this map called that we have here?

A. It is a map that comprises the railroad lines in the Western Trunk Line Association; all lines north and west of St. Louis and East St. Louis, and west of Chicago to the Missouri river and beyond; but the association itself does not extend its authority or influence west of the Missouri river, and the map is a map of all the roads in that territory.

Q. And it shows the entire line of the Minneapolis & St. Louis located in Minnesota, Iowa and South Dakota?

A. In all of the states it traverses.

Q. Your road is operated as one line and without regard to state boundaries?

A. Yes, sir.

Q. And is engaged in hauling both kinds of commerce, the interstate and the intrastate?

A. Yes, sir.

Q. Of both freight and passengers?

A. Yes, sir.

Q. Now, I want you to explain, in detail, how it is that the enforcement of the commodity rates specified in Chapter 232 will affect interstate rates or the flow of interstate commerce.

A. With the Minneapolis & St. Louis road, particularly, the change of a rate as per Statute 232, would disturb the wheat rates—the rates on our principal item of traffic—and on coal. It disturbs other rates, but those rates in particular I speak of.

Q. Minnesota is a wheat-producing state? A. Yes, sir.

Q. And produces more than is consumed in the state?

A. It has a surplus to ship out.

Q. And it is not a coal-producing state?

A. It is not a coal-producing state. Then, besides, there is a relationship between the wheat and the flour, and we hold and know—have satisfied ourselves—that a change in the rate on wheat (a change from a producing point to Minneapolis, for

instance) will change all of our other rates from Minnesota to all other markets outside of the state on both wheat and flour, and change the relationship as between the wheat and the flour itself. And I will try to explain what I mean. In the first place, you have got to take Minnesota without any railroads in it,—a growing tariff, because tariffs are grown and developed and not made by the traffic man. In 1857, if you will, there were no railroads in Minnesota; in fact, I think in that year the only flour they had up around St. Paul and Minneapolis was 2500 pounds that came up on the Mississippi river and was taken over to St. Anthony, just east of Minneapolis. Then there were small roads built. I think the first small road was in St. Paul over to St. Anthony or a branch over to Minneapolis; and then there was another line that went out to Breckenridge; then there was another little line up around the boundary here and there was a line then down toward Faribault. The railroads began to grow, and as the railroads began to grow they began to grow wheat. Now, the first tariffs, I am certain, that were put in, for instance, in Minnesota, must have been put in by a letter (just a letter tariff,) making the wheat rates from some point to Minneapolis. They were not manufacturing wheat there but that was probably the terminal or St. Paul. Then they had a schedule, they brought the wheat to that point. After a time, as the railroads extended, then we get to the point where there was a surplus of wheat, (not of the products of wheat but a surplus of wheat) a surplus of wheat that was looking for a market. That is the history of the state, if I understand my reading. They had to sell that in the East in competition with other wheat grown in the United States and in competition with wheat from other older countries of the world. They tried to get wheat to Liverpool and did. There was a relation between the wheat rates in themselves. Then an old pioneer came along, and an old eastern pioneer, and found that the water power at St. Anthony could make wheat into flour,

and there was no use of shipping the wheat East, but they would build up a milling plant there, which they did, and it grew to be the largest milling center in the world. Now, there is where your relation with flour began. In the first place, the wheat from all of the lines, as they developed, gradually came into Minneapolis. Chicago kept striving for a part of it to Chicago, but the mileage being so much closer to Minneapolis they got the wheat into Minneapolis and put it into flour, Chicago could make no headway against them, they got so strong that she has never made any impression on them since, so far as manufacturing is concerned. They concentrated the wheat there, made it into flour, and gradually a railroad developed a through line from Minneapolis to Chicago and Minneapolis to the East. They concentrated the product of all of the wheat here onto about one or two lines. It made a tremendous stream of traffic out of the state; in fact, the state of Minnesota grew to be one of the largest shippers in the United States, taking it as a state. That had an effect in the rates here. In other words, that stream started there and flowed continuously in box-cars and engines until it got to Chicago—

Q. That is, from Minneapolis?

A. From Minneapolis to Chicago and to the East; no matter where the freight went, (the flour or the wheat) whether to New York, Baltimore, Philadelphia, the Southeast, or Europe, it all had to go through that narrow channel and it was concentrated on that line. The result was that the rates between Minneapolis and Chicago went down faster, sought a level quicker, than the rates up in here where you were constantly running in little branch lines wherever there was a virgin field that could be tilled and where they knew the soil had the qualities of producing wheat. Now, Minneapolis, as I have said, grew to be the largest flour-manufacturing point in the world. It was not very long until the people in the state of Minnesota, the men who knew how to make flour, said, "Why not have mills

located around in the state of Minnesota?"

Q. That is, interior mills?

A. Interior mills. Say Wells, Sleepy Eye, New Ulm, Fairfax, Waseca, Montgomery, etc. They said, "We want to build mills there." "Well, all right, go ahead and build them; we will be glad to have you do so." "What is the freight rate?" "Why, whatever it is on wheat into those points, and whatever it is on flour out of those points." "Well, but the sum of those rates is too high; it is three times the sum of this through rate on the concentration process."

Q. By this "through rate" you mean—?

A. I mean the rate that has been made from Minneapolis to Chicago in the concentrating of all tonnage. The railroad man then figured out with the shipper this plan: "Put your mill in at some point on our railroad and we will guarantee you"—the railroad man was willing to, and did, guarantee that the rate from the interior point on wheat and flour would not exceed the rate from any point in Minnesota on wheat to Minneapolis, and 7.5 cents from there to Chicago. In other words, take New Ulm: The New Ulm man would be told that his rate into New Ulm from all Minnesota territory (or, for that matter west of there, but we are referring to Minnesota) all wheat from Minnesota territory on the roads running into New Ulm could be brought into New Ulm and there concentrated, made into flour, and that the rate from all of this territory on wheat to New Ulm made into flour and marketed in the world's markets out this way, out through Chicago and to New York, would not be higher than the rate on wheat to Minneapolis plus 7.5 cents. There you grow, from the relation of the rates on wheat into Minneapolis.

In the meantime roads are built into Duluth and then Chicago; there is your wheat relation. Then comes your milling industry to Minneapolis and the railroad man throwing, as it were, a blanket of justice and equity and fairness over the state

of Minnesota that gives to the state of Minnesota, to every point in the state of Minnesota, the advantages of Minneapolis. The miller at every point in Minnesota has exactly the same privileges as if he were located at Minneapolis, the only difference being perhaps in some detail of management or cost. That was the intent.

Now, I hold that it is impossible for distance to have figured in that, I hold that it is impossible for rate per ton per mile to have entered into it, for the reason that the business was developed and the rate per ton per mile became a factor of information with relation to that thing, but I do hold that every element of civilization entered into that milling-in-transit rate; it began in the western part of Minnesota, and never wound up in its influence or effect until it was a loaf of bread and fed to a man in Europe. And I hold that the relationship of the rates and that relationship would be disturbed by Chapter 232, and I will do my best to show how I figure it in the tariffs. I have tried to say that there is a relation fixed by those conditions, that the state and the interstate—and the international rate, if you will,—are absolutely interwoven in that commodity of wheat and flour.

Now, take the station of Redwood, first, Redwood and Redwood Falls: The old rate from Redwood Falls to Minneapolis was 10 cents per hundred pounds; the rate from Redwood Falls (tracing on map) through *via* Waseca, Minn., Winona, Minn., and Madison, Wis., on the Northwestern road, was 17.5 cents per hundred pounds. Your distance from Redwood to Minneapolis is 106 miles over the M. & St. L., and your distance from Redwood Falls *via* Winona to Chicago, over the Northwestern road, is 505 miles. The old rate from New Ulm to Minneapolis was 10 cents per hundred pounds, for 87 miles, over the M. & St. L., and the Northwestern rate from New Ulm over the same route as the Redwood Falls shipment traveled to Chicago, is 17.5 cents per hundred pounds and the distance 457 miles. There is

Duluth competition at those points, but not direct competition. In other words, no railroad starts from Redwood Falls or from New Ulm and with its own rails goes to Duluth; the Omaha road is a part of the Northwestern system, but it doesn't fix its rates that way, so that Duluth competition enters into it. I cite that to show that the distance of 106 to 505, and 87 to 457 had nothing to do with the making of those rates and to show that there must be a direct relationship between the rates because there is an arbitrary difference there stated of 7.5 cents,—and that has been an arbitrary of years standing, it has varied a little, one-half a cent, I think, but it is stationary at about 7.5 cents per hundred pounds,—at the same time there is a difference, and a great difference, but distance does not enter into it in any way.

When you get farther south,—take Sleepy Eye. Sleepy Eye is a Northwestern point; St. James is a Minneapolis & St. Louis and Omaha point; Winnebago City is a Milwaukee and Omaha point; Waseca is an M. & St. L. and Northwestern point; Albert Lea is a Minneapolis & St. Louis, Milwaukee, Illinois Central and Iowa Central, and Rock Island junction-point. As you get toward Chicago here, that difference is less; it grows to be about 5 cents at Albert Lea. I think it is 5 cents or 6 cents at Winnebago City, but it grows less as the majority of the influence of the roads appears to draw toward Chicago; so that when you get south of our line or into the southeast quarter of Minnesota you find that the arbitrary difference is always a stated figure but grows less; that is, there is a 7.5-cent territory in here and a 5-cent territory in here that is fixed evidently by the influence of the roads, *but* the milling industry is always built up upon the 7.5 cent basis; that is, the rates fixed from Albert Lea or from Wells or any of these points in Minnesota are fixed on the basis of 7.5 cents above the wheat rate to Minneapolis, but in the southeast quarter of Minnesota the rate is based on 5 or 5.5, I don't remember just which, but think 5 cents.

Now, distance doesn't have any influence in making those rates, it is very evident, because the distance from Albert Lea, as an example, to Minneapolis, is 108 miles, while from Albert Lea to Chicago the rate is 15 cents on wheat and the distance from Albert Lea to Chicago is 382 miles; that is, the distance is as 108 to 382, but there is but 5 cents difference in the rates, in fixing the relation of the rates. Now, take Marshall, Minnesota.—

Mr. O'BRIEN: If it doesn't interrupt you, Mr. Tittemore, I don't understand what you mean by that. That is, I don't understand what you mean by those "different rates."

WITNESS: Well, your rate from—

Mr. O'BRIEN: Couldn't you give us some concrete example of that?

Mr. BUTLER: He was just about to, I think.

WITNESS: No, I was going to take Marshall, but I will take one of those points and then I will go on to Marshall. Take Albert Lea to Minneapolis: The rate on wheat from Albert Lea to Minneapolis is 10 cents per hundred pounds. The rate from Albert Lea to Chicago is 15 cents per hundred pounds.

Mr. O'BRIEN: What is the rate from Albert Lea to Chicago *via* Minneapolis, on your line and then some other road?

WITNESS: It would be 15 cents per hundred pounds, but we don't have any milling-in-transit in that case; but the Milwaukee railroad would have a milling-in-transit arrangement at Albert Lea that would not apply to our road. It is unfortunate for me to have put in the Albert Lea situation, for instance, with the Wells situation; I see that now, and it would have been better for me to have used a point a little farther west of Albert Lea, because Albert Lea is the southern terminus of our road, and a man wouldn't have come to us to have gotten a milling-in-transit arrangement to Chicago because that wouldn't be helping him, but the Milwaukee company could say, and the Mil-

waukee would say, "You put your mill on our tracks at Albert Lea and we will take the Minneapolis & St. Louis wheat and let you mill it at Albert Lea and send it to Chicago and your rate from Albert Lea to Chicago will not be more than 5 cents per hundred pounds over your rate to Minneapolis."

Mr. O'BRIEN: I hope I am not interrupting you, but here is the idea that I had in mind: Could the Minneapolis mills purchase the wheat produced at Albert Lea, mill it and ship it to Chicago, for the same rate that the wheat could be brought from Albert Lea to Chicago over the Illinois Central from Albert Lea?

WITNESS: No.

Mr. O'BRIEN: Will you give us those different rates, then?

WITNESS: Which rates do you want?

Mr. O'BRIEN: Well, now, if I owned a carload of wheat at Albert Lea, that was destined for Chicago, and I had to pay the freight, would I pay any more if that wheat was hauled to Minneapolis, milled there, and shipped as flour to Chicago from Minneapolis than I would if I shipped my wheat directly from Albert Lea to Chicago over the Illinois Central or the Iowa Central?

WITNESS: Well, we don't make any rates from Albert Lea *via* Minneapolis, in connection with the Milwaukee road, to Chicago.

Mr. O'B ": Well, does any road?

WITNESS: And it hasn't any relation to the relationship of the rates in locating the industry. We are on two different tacks, Mr. O'Brien, and what I testified to (so that I may be plain on that, and then I will try to make myself understood on your point) what I testified to was, when the miller was induced to locate at Albert Lea, there was a relation fixed between the wheat and the flour with reference to competition at Minneapolis. Now, take Albert Lea, located there (pointing on map) and take Winnebago City on the Milwaukee, just west

of there; the Albert Lea man bids over in this territory for wheat to be milled at Albert Lea to be taken to Chicago, and his basis or relationship of the rates is fixed on a certain arbitrary above the rate into Minneapolis on the wheat. From the Redwood Falls territory that difference is 7½ cents; in the Albert Lea district and farther down where Chicago competition comes in and affects it, the difference is less than 7 cents. What I was leading to was that the competition fixes it and not the distance. But, as a matter of detail, if a man came to me as traffic manager of the M. & St. L., and said, "We want to mill wheat at Minneapolis and then to Chicago," that presents altogether another proposition. There is no necessity for the relationship, because the industry is located and fixed, and the power to do it lies with the direct line that furnishes the wheat from west of here. In order to get a milling-in-transit, you have got to produce the wheat. We don't produce the wheat south of Albert Lea on our road, and we have nothing to haul into Albert Lea to mill but wind or water or something of that kind—we haven't any wheat.

Take Marshall, Minnesota. Here is Marshall, Minn.; here is Hanley Falls, on the Minneapolis & St. Louis; here is Granite Falls, on the Milwaukee; the rate from Marshall to Duluth, as I remember it, was 10 cents per hundred pounds. I wanted to show that, take Marshall, Minn., Hanley Falls, Minn., and Granite Falls, Minn., are affected by a change in Chapter 232. In the first place, Marshall has a direct line to Chicago *via* Winona and the Northwestern railroad; I don't remember the distance. Then the Minneapolis & St. Louis has a line from Hanley Falls to Minneapolis; the Milwaukee has a line from Granite Falls through to Chicago and also a line into Minneapolis. The old rate from Hanley Falls to Minneapolis on our road is 10 cents per hundred pounds. In the first place, they had the rate to Minneapolis of 10 cents per hundred pounds plus, and 7½ cents above that rate to Chicago, or 17½ cents through.

Now, I change the rate at Hanley Falls to the statute basis to Minneapolis, 8½ cents per hundred pounds or a cent and a half per hundred pounds, and the rate from Hanley Falls to Chicago is reduced exactly in that proportion.

Q. Well, now, why so? That is to say, if you cut a cent and a half off from the rate at Hanley Falls or Granite Falls or Marshall into Minneapolis, why does it become necessary to cut off a like amount to Chicago?

A. In the first place, all of our industries, not only at Hanley Falls but at all other points, all of our flouring industries are located, based and predicated upon an arrangement that the rate on wheat milled into flour at other points shall not be higher than 7½ cents above the rate from that point on wheat to Minneapolis, and that in every case on our road.

Q. Now, leaving out of consideration the milling-in-transit matter and dealing with it simply as wheat, what effect upon the market at Minneapolis as compared with the market at Chicago would be the maintenance of the lower rate, relatively, to Minneapolis than to Chicago?

A. If you lower the rate from Minnesota territory (say Hanley Falls and our railroad stations on wheat into Minneapolis,) you reduce the rate and unless you reduce the rate proportionately to all other markets, you discriminate exactly in favor of Minneapolis and make a direct discrimination in favor of Minneapolis and you throw the competitive markets out of balance. For instance, every time you reduce the rate from Hanley Falls, or from any other point in Minnesota, to Minneapolis on wheat, you can see very plainly that it makes the man out here at his milling point pay more for his wheat unless he has reductions to other markets through which he goes out. The object of showing the route from Marshall to Duluth *via* the Great Northern, and from Hanley Falls to Minneapolis over the M. & St. L., and from Granite Falls to Minneapolis and to Chicago, and from Marshall to Chicago, was to

show that, in making the rates or in growing the tariffs, distance hadn't anything to do with it, and that so far as the railroad was concerned, competition did it. Competition—that 7½-cent relationship—was not gotten in a friendly manner; it was the result of contention, and, I have no doubt compromises, after rate wars of lesser or greater moment.

Q. And, as applied to this territory, as I understand you, it has long been considered by shippers and carriers as relatively just between these primary markets in the different states, Chicago in Illinois and Minneapolis in Minnesota?

A. I can't remember when it was not, and I have been connected with the traffic quite a while.

Q. Now, before we leave that: With respect to other stations than those which you have named which were junction-stations, is there competition of carriers to Chicago felt at all of the stations in southern Minnesota?

A. There is.

Q. For the grain?

A. There is.

Q. And this relationship indicated at 7½ over a large area of Minnesota, and some lesser amount in the southeastern corner of Minnesota, has existed and been maintained for a long time?

A. Yes, as long as I can remember.

Q. Now, if that be disturbed by reducing the existing rates to the Minnesota primary market at Minneapolis, what effect will that have with respect to the flow of the traffic? Where will it go,—to Minneapolis or to Chicago?

A. If you reduce the rate to Minneapolis, it will come to Minneapolis.

Q. To the exclusion of Chicago?

A. To the exclusion of Chicago or through Chicago.

Q. And that covers the territory without regard to whether or not at each individual station there happens to be a junction-point with the Chicago road?

A. That is true; because, take Fairfax, a local point on our road, or Boyd, or any other point at which there would be a mill, or whether there is a mill or not, every station producing wheat has the advantage of the price that is fixed by the transit arrangement. For instance, if Fairfax has a mill, Fairfax bids on our line out to Watertown at all points in competition with the miller at Minneapolis. The same way at all other points. Now, if you reduce the rate on wheat to Minneapolis and don't reduce the rate on flour to Chicago or East, your man at Fairfax is paying more for his wheat, your interior man is paying more for his wheat, because of the lower rate to Minneapolis, and he would have no equalized advantage in shipping out through Chicago. I have some concrete examples of that.

Q. Then, as I understand it, the changing of the local rate on the grain to Minneapolis by lowering it would operate as a discrimination against the interior miller, operate as a discrimination in favor of Minneapolis as a primary market as against Chicago and other markets outside of the state reached by interstate hauls?

A. Yes. Now, I will endeavor to make plain by example what I mean. Were the statute rates to Minneapolis from all stations in Minnesota adopted and no change made in the Chicago rates, the Minneapolis and interior miller would be on the same relative basis, compared with each other, as at present—the *miller* I am speaking about—but the interior miller would be placed at a disadvantage compared with mills in any other territory, or Minneapolis would be at a disadvantage as compared with a mill in Kansas, for instance. I will take Fairfax again, because we started out on Fairfax and not because it is any different than any other station. The rate on wheat or flour, under the statute basis, from Fairfax to Minneapolis, is 8½ cents per hundred pounds. Now, the rate from Minneapolis to Chicago and New York is 25 cents per hundred pounds; that makes a through rate of 33½ cents. I should

have said that that was the old rate from Fairfax to Minneapolis. The statute basis would make the rate from Fairfax to Minneapolis 7.4 cents. Apply that to the rate from Minneapolis to New York, through Chicago, and you get a rate of 32.4 cents, and that rate (that 25-cent rate from Minneapolis to New York) is made up of 8.3 cents to Chicago plus 16.7 cents from Chicago to New York. Your through rate, therefore, from Fairfax through Minneapolis to New York under the first or old basis (that is, the basis of 8½ from Fairfax to Minneapolis) would be 33½ cents through. The second basis, or reducing from the old rate to the statute basis, 7.4 cents per hundred pounds, reduces that 33½-cent rate to 32.4 cents. Your present rate from Fairfax to Chicago is 16 cents; that is, your present through rate on a shipment of flour fram Fairfax to Chicago is 16 cents. The proportion from Chicago to New York is 16.7, just the same as it was in the other case, gives you 32.7. Now, when you get those figures, it will be seen that the lowest combination under the old basis would be Chicago, 32.7; that is, both Minneapolis and the miller would use the 32.7.

Q. By the miller you mean the miller where?

A. The interior miller.

Q. At Fairfax?

A. Yes. Now, by the use of the statute rate to Minneapolis and no change made in the rate to Chicago, the lowest combination would be 32.4, and both the Minneapolis and interior miller would use that basis. It would mean that they would both pay 1½ cents more for the wheat at the country stations, while the through rate they would pay from the country stations to New York would be reduced only three-tenths of a cent, or the difference between 32.7 and 32.4. That is a complex statement, and it is hard for a layman to understand. It is absolutely demonstrable, and keep at me until you get it if you don't get it. I don't think Mr. Butler gets it himself exactly,—do you? I want to be plain and get it right because it is a fact. Let

us take Sherburne as another example. The old rate from Sherburne to Minneapolis, 10½ cents per hundred pounds; Minneapolis to New York, 25 cents per hundred pounds; through, 35½ cents per hundred pounds; you change that 10½ factor and make the rate from Sherburne to Minneapolis 8½ cents, Minneapolis to New York 25 cents (unchanged), makes your rate of 33½ cents through. Now, the rate from Sherburne to Chicago is 16½ cents, plus the proportional rate from Chicago to New York of 16½ cents; that makes your through rate 33.2 cents that way. Now, in that case, both Minneapolis and the interior miller would pay the same rate from the country stations to New York as at present, would they not? Now, that lowest combination would still remain on Chicago, which would be 33½ cents per hundred pounds, while the miller would pay for his wheat at Sherburne 2 cents higher by the operation of the lowering of the statute from Sherburne to Minneapolis.

Mr. DURMENT: Well, Mr. Tittemore, not to interrupt you, but I haven't got it through my head yet how the effect of the lowering of the rate from Minnesota into Minneapolis would cause the interior miller to pay 2 cents more or to pay a greater price than he pays under the present.

WITNESS: I didn't, until I spent about four hours with some millers, and I found out this,—

Mr. BUTLER: Had you finished with the example?

WITNESS: Pretty nearly.

Mr. DURMENT: Pardon me, I thought you had finished.

WITNESS: Well, I hadn't quite. They would pay for wheat at Sherburne 2 cents higher than at present. Minneapolis is the market; the Minneapolis price governs everywhere in Minnesota on wheat, say. It is the primary market and its price governs, it is the one used. The freight rate from Sherburne to Minneapolis is a big factor in the price; reduce the freight rate and it affects the price of wheat every time, there isn't any question about it. It makes the man at the other end of the

line pay a higher price for his wheat; I don't know if the farmer gets it or who gets it, but it produces a discrimination at once so far as the milling industry is concerned, and that is one of the things, in days gone by, that has called meeting after meeting in order to keep that adjustment proper or right. Just as soon as you change the rate to Minneapolis on wheat, voluntarily or otherwise, you throw that relationship that I have talked so much about out of joint, and by reducing the rate in Minnesota on wheat (the raw material, if you will,) you throw Minneapolis out of line with every other primary market.

Q. Minneapolis, therefore, as a primary market, has an advantage, with respect to rates, over the outside markets, if the basis that has been lived on so long as between the markets was relatively just and fair?

A. That is what I undertake to say and what my experience has taught has always maintained those conditions. Now, I want to say that that condition holds good at every point on our railroad, except on the Albert Lea division, where transit privileges are not given, as I explained some time ago, because we don't want to haul our traffic around that way.

Now, let us see how it would affect the Albert Lea division. The old rate from Manchester to Minneapolis was 10 cents per hundred pounds; the rate from Minneapolis through to New York was 25 cents, the through rate 35 cents per hundred pounds; the statute rate would be 7.8 cents to Minneapolis from Manchester and the rate from Minneapolis to New York 25 cents, which would make a through rate of 32.8 cents under the statute basis. In other words, the statute basis would have the effect of reducing the through rate from Manchester to New York from 35 cents to 32.8 cents per hundred pounds, and the wheat at Manchester is floured at some point intermediate, the transit privilege is given on all of these rates, and it follows clear through to New York, so that the wheat in Minnesota milled under the statute basis has the effect of making at New

York a through rate of 2.1 cents per hundred pounds, the difference between 35 and 32.5. Now, the rate from Manchester to Chicago is 15 cents per hundred pounds. Then there is that proportional rate from Chicago to New York of 16.7,—

Q. That is fixed and rigid?

A. That is fixed and rigid,—so that the 15-cent rate and the 16.7 make 31.7, therefore, there is a 31.7-rate from Manchester to New York made in that way. That is the lowest combination.

Q. In one case it bases on Minneapolis and in the other case it bases on Chicago?

A. That is it, exactly.

Q. And if you change the rate into Minneapolis it changes that combination just that much and the other change must follow or the traffic all go one way?

A. That is as I get it. In this case, for instance, the lowest combination is still on Chicago and the interior miller would pay the same rate on wheat from Manchester milled say at New Prague, destined to New York, as he does at present because, by reduction in the rate on wheat to Minneapolis he would be compelled to pay 2.2 cents per hundred weight more for the wheat. The Minneapolis man, in this instance, could not use the Chicago combination because of no milling-in-transit privileges and therefore would have to use the Minneapolis combination, which, under the statute, would be 32.8 per hundred pounds as against the old rate of 35.

Q. Now, what do you mean by "the Minneapolis combination"? Is that *via* the Soo?

A. Any way; by the Q, or by the Milwaukee, by any line, as far as that is concerned.

Q. That is, the rate from Minneapolis to the seaboard, whether the routing is *via* the Soo Line and Gladstone, or whether it is *via* the Chicago lines, is the same or relatively the same?

A. Yes.

Q. What is it? Is it the same or relatively the same?

A. State that again.

Q. I say the rates from Minneapolis on the products of wheat to the seaboard take a good many different routes, either *via* Chicago or by the northern route by Gladstone?

A. Yes.

Q. Now, in such cases are the rates the same no matter which route is taken.

A. Yes.

Q. I don't care which route is taken.

A. The rate is the same always by all routes. The Minneapolis miller in that case could not, for instance, at the present time, purchase wheat on our Albert Lea division to be milled at Minneapolis because we have no transit arrangement at Minneapolis.

Q. But if the wheat went through without milling, it could flow that way?

A. Yes. I make that statement because there are no milling-in-transit arrangements on that line; the combination on Minneapolis would still be higher than the combination on Chicago.

Q. Before you leave the subject of wheat,—so far, and in the examples that you have taken, you have confined yourself to southern Minnesota points in the territory served by your own company. Does this relationship of rates between Minneapolis & Chicago exist,—I don't mean at the same factor but at all—in territory north of your line in Minnesota?

A. It does; that is the relationship. Take it on the Great Northern road, for instance. North of the M. & St. L.?

Q. Yes. What is the road next north of you,—the Milwaukee, is it not?

A. Yes.

Q. Paralleling you on the north?

A. Yes.

Q. And that same relationship holds in the territory served by that line?

A. By that line. I am not certain as to what the milling-in-transit rule on the Great Northern is, but I think it is exactly the same as on the other roads.

Q. Now, as to the primary wheat markets, Minnesota has two: one at Duluth and one at Minneapolis?

A. Yes, sir.

Q. And the other competing primary markets outside of the state are what?

A. Chicago,—

Q. Milwaukee?

A. Milwaukee, and the East. Buffalo, and most all of the lake ports, but Buffalo, N. Y.—

Q. Is Kansas City a primary market for wheat?

A. Yes.

Q. Do the carriers tributary to Kansas City extend an influence into Minnesota with respect to the wheat rates, or does it all tend easterly?

A. It tends easterly, but the basis is the same, about. For instance, a milling industry, I notice, located in Kansas, is about on the same basis as a milling industry in Minnesota; and I notice in the tariffs that the rate from Kansas City to Chicago, or the proportions of the rate out there East *via* Chicago, are about the same as from Minneapolis to Chicago on the same class of shipments, wheat or flour. There is a direct relation between the wheat in Kansas and the wheat in Minnesota and the flour produced in the two states.

Q. Now, without regard to the difference between the rates from the producing territory of wheat in Minnesota to the primary markets of Duluth, Minneapolis, Milwaukee, Chicago and the other markets, do I understand that the principle which you have sought to illustrate is this: that if you reduce the rate from the wheat-field to the Minnesota primary market and do

not reduce the interstate rate from the same territory to the primary markets outside of the state, it will disturb the existing flow of interstate commerce and center it in favor of the two Minnesota primary markets?

A. It will center it in favor of the two Minnesota primary markets so far as wheat is concerned.

Q. That is what I was speaking of.

A. Yes, so far as wheat is concerned.

Q. I was speaking of wheat. That is to say, wheat which now, on the rates existing between these markets, flows some to one place and some to another, would be diverted to Minnesota points by the reduction from the Minnesota fields to those points, unless a corresponding reduction were made to the interstate points?

A. That is, so far as wheat is concerned.

Q. Yes, that is what I am speaking about.

A. Yes.

Q. Now, I want to speak of wheat originating on your line westerly of the Minnesota boundary. I understood you to say that, with respect to the relationship between Minneapolis and Chicago, the territory extended west of Minnesota.

A. It does; on our line to the Missouri river to LeBeau, Aberdeen, and Leola.

Q. And what is true of Minnesota would be true of that part of South Dakota served by you?

A. It would.

Q. A disturbance of the rate to Minneapolis would either discriminate in favor of Minneapolis or require a change of the rate to Chicago and Milwaukee?

A. It would.

Q. Now, take as an example the station nearest to the Dakota boundary but within Minnesota; I think it is Marietta.

A. Yes.

Q. The statute rate would reduce that rate 1.7 cents per

hundred pounds to Minneapolis; that would disturb the relation between that station and the town next beyond or the towns along your line in South Dakota?

A. Yes, sir.

Q. And would give the town just inside of the boundary line of Minnesota an advantage of that amount, 1.7 cents per hundred pounds, over the town farther beyond unless those rates were adjusted again to the same relation?

A. Yes.

Q. Now, does your road compete for wheat for haul to Minneapolis from the fields of Iowa where you run down to Iowa, or does that all naturally go in the other direction?

A. Well, if there is a car down there, I should presume it would go in the other direction.

Q. It is not a wheat-producing territory?

A. It is not a wheat-producing territory. I never knew of a car of wheat straying out of Iowa over our road.

The MASTER: Don't they raise it at all down there?

WITNESS: They don't on our road.

Mr. O'BRIEN: Principally corn, I imagine.

WITNESS: Yes, sir.

Q. Now, you may take up the effect, if you wish to now, of the enforcement of the statute schedule with respect to coarse grains on your line, and point out how it would affect the interstate rates on coarse grains.

A. I want to do that, but I don't want to leave that other question, Mr. Butler.

Q. Which one?

A. The one with relation to wheat. There is a difference between the wheat and the flour.

Q. Well, I will ask a question, then. In the questions that I have recently asked you I have referred to the transportation of wheat alone; what you have answered with respect to wheat does or does not apply with respect to flour?

A. It does apply with respect to flour, but not in exactly the same way. For instance,—

Q. You may tell in what way, and then I will see if it results the same.

A. For instance, Fairfax and Minneapolis are bidding on wheat out here—

Q. In western Minnesota?

A. —in western Minnesota, to be milled at Fairfax and at Minneapolis, for New York. Now, if you reduce the rate on wheat from Fairfax to Minneapolis, this Minneapolis miller, having a fixed rate to New York, if you don't make any change from Fairfax through Chicago to New York, you are compelling the Fairfax man to pay more for his wheat, and if you do not reduce his rate *via* Chicago to the world's market to sell in competition with Minneapolis, you are discriminating against him, so that there would be a discrimination in the state in that way,—

Q. Against the interior miller?

A. Against the interior miller; that is, the added influence that the rate has with regard to the manufacturing of flour.

Q. As well as in the case of wheat a discrimination in favor of the Minnesota primary markets against the outside primary markets?

A. That is the point that I wanted to clear up. Minneapolis gets its wheat just so much cheaper than Fairfax gets it; that is it. We find while the Minneapolis market governs on wheat that Minneapolis market is governed by Liverpool, for instance, and New York; that influence comes back and makes the Minneapolis market, which is arbitrary.

Q. Now, you may explain with reference to coarse grain, on the same principle.

A. Of course, in the first place, the question of manufacture of corn and oats into product does not enter into the coarse-grain question.

Q. That is, the milling-in-transit feature is not present, in the coarse-grain schedule?

A. To some extent that does in the wheat, although we do have transit rates on oats, and mill, for instance, into product like rolled oats and that sort of thing, but not to any great extent; but the industry located is located upon a basis of through rates. Take the rates on coarse grain, that is, on corn, oats, rye and barley, from Wood Lake to Minneapolis,—

Q. Where is Wood Lake?

A. Just east of Hanley Falls. From Wood Lake to Minneapolis the old rate was 10 cents per hundred pounds. On a distance of 129 miles, fixed by the statute, the rate would be 7.4 cents per hundred weight, or a reduction in the rate from Wood Lake to Minneapolis of 2.6 cents. The old rate to Chicago was made up, 10 cents plus 7½ cents, or the sum of the locals. Take Sherburne, the difference there has been fixed at 7 cents; the old rate from Sherburne to Minneapolis was 11 cents per hundred weight; the rate to Chicago 18 cents. The distance from Sherburne to Minneapolis, 138 miles, would make the statutory rate of 7½ cents per hundred pounds, and would be a reduction of 3½ cents per hundred pounds. The reductions forced by competition in the fall of 1906,—usually described in this case as "voluntary reductions,"—left the coarse-grain rates 10 cents per hundred weight from Dunnell to Minneapolis, and 16 cents per hundred weight from Dunnell to Chicago, Dunnell to Minneapolis, and Dunnell through Estherville and the Rock Island road, to Chicago.

Q. The Chicago rate 16 and the Minneapolis 10?

A. The Chicago rate 16 and the Minneapolis 10. The distance from Dunnell, which is our southernmost Minnesota station, on the Southwestern division, to Minneapolis is 145 miles, and under the statute the coarse-grain rate for that distance is 7.6 cents per hundred weight, or 2.4 cents lower than the rate in effect at present to Minneapolis. Applying this rate of reduction

to the rate from Dunnell to Chicago at 16 cents, I find the Chicago-rate influence by the statute would be 13.6 cents per hundred weight. Now, as Dunnell coarse-grain shipments for Chicago go out *via* Estherville and the Rock Island, they travel also down here and go through Spencer *via* the Milwaukee to Chicago; then they come on down to Sioux Rapids and go out to Chicago over the Northwestern; then they follow along down and go to the Illinois Central at Storm Lake; then shipments of coarse grain from Dunnell will go to Peoria, Illinois, away down here (pointing) and they will travel out through Spencer, down over the Minneapolis & St. Louis to Des Moines, passing through Rolfe, a junction with the Northwestern, Gowrie, a junction with the Rock Island, Grand Junction, another junction with the Northwestern, Perry, a junction with the Milwaukee. The 13.6-cent rate from Dunnell through all of those junctions makes that the maximum rate that we can charge to all of the territory west of Grand Junction; I think that is the exact point. That is the effect of the reduction of the rate from 16 to 13.6,—reduces the rate to Chicago, makes a reduction of 2¼ cents on coarse grain from Dunnell to Chicago through Estherville, Spencer, Sioux Rapids, Storm Lake and Des Moines. The rate, for instance, from Spencer and Ruthven to Chicago is 15½ cents; from Rolfe, 15 cents; Gilmore, 14½ cents; Pioneer, 14 cents; so that that reduction of 2¼ cents covers a large area and forces a reduction in a large area of Iowa territory on our road and other roads, and none of that business whatever touches or goes through the state of Minnesota. And why do that? How, for instance, when you get at Huntington, Iowa, can we hold a 16-cent rate to Chicago as against a rate reduced from Dunnell to Minneapolis 2¼ cents per hundred pounds when the basis of rates has been fixed by competition and been in use for years? You disturb a rate just above the Minnesota line to a primary market 2¼ cents per hundred pounds, which represents three times the profit on coarse grain to the

elevator man oftentimes, how can you do that without disturbing the rate from Huntington, Iowa, to some point equally and to all other markets? because, after all, when you get a little below Huntington you have got Estherville. If we protect Huntington as against Dunnell, the Rock Island immediately says, "Well, we are going to protect Estherville to Chicago as against your protection from Huntington and Dunnell to Minneapolis or to Chicago." Why? Because if they didn't, we would get all of the grain to our elevators and we would dry them up,— and that was a process, once, of "drying them up" (and I know how to use the method,) and that has that effect and would have that effect.

Q. That is, if the interstate rate to Peoria and Chicago were not changed correspondingly so as to keep the relation which heretofore existed, it would divert the flow of the traffic to Minneapolis?

A. It would.

Q. And be a discrimination and advantage in favor of the purchaser for Minneapolis as against purchasers for the other markets?

A. That is true. But take Dunnell and Huntington, stations five or six miles apart, a state line dividing; suppose you make your rate 2¼ cents less on coarse grain from Dunnell to Minneapolis; now, Huntington is on our line, and we have no railroad to Chicago, but to Minneapolis; suppose we don't reduce the rate from Huntington to Minneapolis to correspond with the reduction from Dunnell to Minneapolis, where do we leave the man? He is buying grain at Huntington from the farmer in competition with a man at Dunnell from the farmer to go to some market that the Minneapolis & St. Louis provides transportation to; but if the man three miles in Minnesota has a rate of 2¼ cents per hundred pounds less than the man three miles over in Iowa, he is "dried up," his industry is destroyed, unless he can get a reduction in an interstate rate to let him out

to some other market; and that is just what we do by these other junctions, and that is why we reduce the rate, to keep equality as between the two. Now, take Spencer, for instance, and going back to the old Ex. 14, there was actually shipped of coarse grain during that period by the M. & St. L. out of Spencer to Chicago 4,320,000 pounds. Upon this there would be a reduction forced by the application of the statute, as I hold, amounting to $369.36. That does not include a through reduction; in other words, we figured only our percentage of the reduction. Now, take the Iowa Central road; if we make a rate of 13.4,—if we reduce the rate from Dunnell 2¼ cents per hundred pounds—

Q. To Minneapolis?

A. —to Minneapolis, and reduce it to Chicago, Milwaukee, and other markets to correspond, we haul our business right through Iowa Central junctions just east of this line here. The rates at present in Iowa on coarse grain, in the northern tier of counties in Iowa, is higher than the reduced rate would be from this territory (pointing) so that all the time we carry through the Northwestern and they carry through the Rock Island, and the Milwaukee through both, and all through the Iowa Central, you have torn down a system of interstate rates that I think comprises thirteen counties in the state of Iowa, you tear down every one of them and produce a lower rate of freight on every pound of coarse grain shipped from all of the stations located in those counties to Chicago, and no part of that grain goes through Minnesota or is routed through Minnesota.

Now, about the oat-meal (oats and its product): The present rate on coarse grain from Albert Lea to Minneapolis is 9 cents per hundred pounds, that is, the old rate. On that distance the rate that would be fixed by statute would be 7 cents per hundred pounds, or a reduction of 2 cents per hundred pounds; there would be a reduction of 2 cents per hundred

pounds in the haul from Albert Lea to Minneapolis. The difference between the Minneapolis rate and the Chicago rate is 5½ cents; in other words, the rate from Albert Lea to Minneapolis 9 cents plus 5½, making 14½. Under the statute the rate would be 12½ from Albert Lea to Chicago. Now, competition and our arrangement with elevators and men buying coarse grain on our line at Twin Lakes—

Q. In Minnesota?

A. Yes,—and Emmons, Minnesota, is such that we cannot advance the rates there, we must give them the same rates as at Albert Lea, and that is our agreement to do that. We do that because of the competition of the Rock Island road just east and of the Iowa Central road just east of the Minneapolis & St. Louis; the Iowa Central and the Rock Island road use the same tracks, but operate as two railroads over it and produce competition just the same as though they had two tracks, just east of the Minneapolis & St. Louis line that runs to Fort Dodge. A very large percentage of the oats marketed along our line south of Albert Lea is converted into rolled oats at Fort Dodge.

Q. You said south of Albert Lea, you mean in Iowa?

A. In Iowa.

Q. And in Minnesota both at Emmons and Twin Lakes?

A. And at Twin Lakes, in Minnesota.

Q. That also flows down there?

A. Yes. There is a cereal mill located at Fort Dodge. Our arrangement with the cereal mill (and I presume all other roads have the same arrangement) is to this effect: that the Fort Dodge rate shall not be higher, (that is, the Fort Dodge rate on the rolled oats or on the oats in and the rolled oats out,) shall not be higher than the rate on the oats from the shipping point (for instance, from Emmons or any of the points north) to any market east and south *via* all junctions, including Des Moines. In other words, we give the oat-mill at Fort

Dodge the privilege of buying oats on our line, shipping them into Fort Dodge at the rate (if you will) to St. Louis. It is a transit rate, and when the shipment leaves Fort Dodge it leaves at the balance of the rate to St. Louis, or the through rate on oats from Emmons or from any point north of Fort Dodge, and rolled oats would be the same through to destination.

Q. As I understand it, it is this way: The arrangement is such that oats and its product from territory on your line, from Albert Lea to Fort Dodge, are on equality, as far as rates are concerned, *via* Fort Dodge and all southern points to where oats and its products are marketed?

A. Yes; it is substantially milling-in-transit and a 2-cent reduction in that territory.

Q. If you have prepared an example that fits it, perhaps you had better give us the example, because that sometimes illustrates the principle and makes it more easy for us to understand than the mere statement of the rule.

A. Well, I will make the statement as I have written it here, because it is exactly the condition in fact. This requires that the Fort Dodge rate shall not be higher than the rate from the shipping point of the oats (for instance, Emmons,) and, as the product moves from Fort Dodge to markets east and south *via* all junction-points, including Des Moines, a reduction in the coarse-grain rate from Albert Lea to Chicago of 2 cents per hundred pounds would force the application of 12½ cents per hundred pounds as the highest rate that can be charged on oats from all stations south of Albert Lea to Chicago, Peoria, and St. Louis. This rate would take the place of the following rates at the points named hereafter. That is, the 12½-cent rate would take the place of the following rates that I will now name from the stations named: Lake Mills, Iowa, Forest City, Iowa, Britt, Iowa, Corwith, Iowa, Luverne, Iowa, and Livermore, Iowa, junctions respectively with the Northwestern, Rock

Island, Milwaukee, Iowa Central, Northwestern and Rock Island. Where the rate is 14½ cents per hundred pounds now on oats the reduction would be 2 cents per hundred pounds or to the 12½-cent basis. From Humboldt, Iowa, a junction with the Northwestern road, the rate would be reduced from 14 to 12½; the rate at Fort Dodge from 13.3 cents to 12½; and at Dayton, Iowa, from 12.9 to 12½. The 12½-cent rate would apply as the maximum rate on coarse grain from all Iowa territory on and east of the line of our road from Albert Lea to Fraser Junction to Chicago, and then we could not escape the effect of it from Tara to Des Moines.

Q. That is on the line—?

A. That is on our Fort Dodge and Des Moines railroad.

Q. That is where your lines parallel?

A. Yes. On the Iowa Central road from Albert Lea south here, the rates would be disturbed from all of its territory, from Albert Lea to Geneva, Iowa, including its branch from Hampton to Belmond. Now, if you reduce the rate on coarse grain from those points to Chicago,—and there are roads like the Iowa Central, and I speak with authority for them, that are not interested in the Minneapolis market—we must reduce the rate to our primary market. Do we want to take our grain to Peoria and haul it over the road for which it was built and give it to some foreign line and they give it to a competitor and take it to some other market and pay them to do it? Now, if in that case the Minneapolis & St. Louis reduces the rate from Emmons on coarse grain and the Iowa Central reduces its rates from Gordonsville to Peoria, if the first adjustment is not right, will it not bring another reduction, and will not the Minneapolis & St. Louis have to reduce its rate in order to keep an equality of market? It seems to me that it would; at least that is the way it has always worked out, in practical competition, with me. Confining the disturbance to the territory traversed by the Minneapolis & St. Louis railroad, which,

of course, cannot be done in practice, (I am speaking of only the rates that are actually disturbed under some old method that hasn't been changed, upon which the industry and the railroad had worked for years, taking that as the method and the basis and not extending it one particle beyond that) the operation of the statute would reduce the rates on grain to Minneapolis and Chicago from the following counties in Iowa: Winnebago,—that takes in this whole territory—(pointing) Emmett, Dickinson, Hancock, Kossuth, Palo Alto, Clay, Humboldt, Pocahontas, Buena Vista, Webster, Boone and Greene.

Q. How many counties is that?

A. Thirteen counties in Iowa.

Q. Now, with respect to the effect of the enforcement of the coal rates in Minnesota between stations in Minnesota upon the rates moving interstate coal into Minnesota.

A. The rate on coal from Duluth to Minneapolis or any other point has a relation to the rate on coal from every other lake port.

Q. Now, in the first instance, mention the lake ports that compete with Duluth on coal for consumption in Minnesota along your territory.

A. Duluth say, is the pivotal point. Then you take—

Q. Superior next?

A. Superior and Ashland, Wisconsin, and Gladstone, Wisconsin, Green Bay, Wisconsin, Manitowoc and Sheboygan and Milwaukee, Wisconsin, and Chicago, Illinois, as lake ports; and then you take the Illinois districts, the Peoria district, the Springfield district and other districts as the LaSalle district, up near Chicago, the Streator district.

Q. Now, with reference to the lake ports from which coal comes that is hauled by your road in part in Minnesota, what ports are they?

A. Duluth, Superior, Ashland, Manitowoc, Sheboygan, Milwaukee and Chicago.

Q. Now, from Duluth to your line you can have an intrastate haul on Minnesota coal?

A. Yes, sir.

Q. Interline with the Northern Pacific?

A. Yes, sir, or the Great Northern.—No,—that is right.

Q. If it comes from Duluth by the Great Northern to Minnesota Transfer, it is interstate?

A. That is right.

Q. If it comes by the Omaha from Duluth to Minnesota Transfer it is interstate?

A. Yes.

Q. If it comes from Ashland by the Omaha it is interstate?

A. Yes, sir.

Q. And if it also comes from Ashland by the Wisconsin Central it is interstate?

A. Yes, sir.

Q. You make no through rates with the Soo from the Gladstone port?

A. No, sir.

Q. Now, does coal also come from Manitowoc into your territory?

A. Coal comes from Manitowoc and Sheboygan and Milwaukee over the Northwestern road into our territory.

Q. The Wisconsin Central reaches Manitowoc?

A. Yes, sir.

Q. And hauls to the Minnesota Transfer?

A. Yes, sir.

Q. And you can take that same coal into your territory?

A. Yes, sir.

Q. The Northwestern also reaches Manitowoc?

A. Yes, sir.

Q. And runs across Wisconsin directly paralleling your line on the south?

A. It runs right across here, right straight through to Winona.

Q. And parallels your line across the state of Minnesota on the south?

A. Yes, you begin about New Ulm, and right south of Winthrop, and then it parallels our line on the south and has branches running from its main line up very close to our line.

Q. And crosses you at Waseca?

A. It crosses us at Waseca.

Q. And you meet again at New Ulm?

A. At New Ulm.

Q. Now, the Milwaukee road, where does it get lake coal?

A. It gets its lake coal from Green Bay (and the Northwestern could do that, too) it gets its coal from Green Bay and Milwaukee.

Q. And it crosses the state of Wisconsin and parallels your road on the north?

A. On the north, yes; comes up through—

Q. Almost across the whole of the state of Minnesota?

A. Yes, sir; out,—let's see—that is the H. & D. division.

Q. And it reaches the lake coal at Milwaukee and Chicago, also?

A. Yes, sir.

Q. Now, what carriers reach the Peoria, Illinois, coal-fields and compete in your territory in Minnesota,—the Rock Island?

A. The Rock Island.

Q. The Rock Island comes directly into contact with you at Albert Lea and crosses from there, partly in Iowa and in Minnesota, over to Pipestone, does it not?

A. Yes, sir, and has branches that come up to and touch us at other points.

Q. Any other roads from the Peoria district?

A. All of the other roads have joint tariffs, I presume; I don't know just what ones. I think the Northwestern has its own rails.

Q. Continuous?

A. Continuous, up into this same territory south of us, so that the coal from Peoria on the Northwestern road would touch the same stations that the Manitowoc coal would on our line south.

Q. So the Milwaukee competes with you with two continuous lines, one from the coal-fields of Illinois and one from Manitowoc and Green Bay?

A. The Northwestern does.

Q. And the Milwaukee with one continuous line from the lake?

A. Yes, and from the south.

Q. And the Rock Island with a continuous line from the district into a part of your territory?

A. Yes; and those other lines have other districts that we don't have, that is, they have local districts that correspond which we don't have with our connection with the Iowa Central.

Q. Giving a chance for coal-producers to compete by other routes—

A. Yes, sir.

Q. —into the same territory. Now, do all these railroads mentioned actually carry coal from these interstate points into this territory?

A. They do.

Q. In competition with you?

A. Yes, sir.

Q. Now, will you explain or tell us whether or not a reduction of the coal rate from Duluth to the Twin Cities on the Northern Pacific line, wholly in Minnesota, would affect the interstate rates from the points to which we have referred where coal is hauled in competition with you in the Peoria district?

A. That is, you mean Duluth to the Twin Cities?

Q. Yes, sir, and from the Twin Cities out. That is, I mean the statute rate applying on the coal line from Duluth to the

Twin Cities and then throughout the state.

A. It would. In fact, the change of the soft-coal rate,—I spent three hours, one afternoon, figuring it out myself, and I came to this conclusion, that I could not reduce for our road a coal rate—that is, I could not let the Milwaukee Company reduce a coal rate from Duluth to Montgomery for 206 miles to $1.19 and the Great Northern to reduce over to Hanley Falls to $1.49,—without, in effect, changing every rate on the M. & St. L. road and the Iowa Central road from Richland, Iowa, away down here, up through this entire territory and out as far as Hanley Falls. The scope of the territory from Richland to Minneapolis would be about 300 miles, and I figured it this way, (and I figured it exactly as I figured every other tariff I ever made before there was any Statute 232): The rate from Duluth to Montgomery (being $1.19) I figured would be $1.20—

Q. For convenience?

A. For convenience sake,—I thought the legislature might let us do that—I figured it $1.20. Now, the rate from the Peoria district and from all this district to Montgomery is $1.40; in order to keep my industries and every one provided with coal on the old basis I would have to make a rate of $1.20, and would have done so. That would make the Duluth-to-Montgomery rate effective from Richland, on the Iowa Central, as a maximum to Minneapolis, or (if you will) to Montgomery; it would change the rates from Chicago, Milwaukee, Sheboygan, Manitowoc and Green Bay, Ashland and Superior, just as it would from the Peoria district and the LaSalle district. I figured that perhaps we could have a higher rate from Peoria to Montgomery, and I may say that the rate from Chicago, Milwaukee and all these points and from Peoria and all that territory to Richland, Iowa, (that is a station about fifty miles west of the Mississippi river) is $1.40, just exactly as it is $1.40 at Montgomery and Minneapolis; the $1.40 "blanket" is 300 miles

long on that one string of railroads.

Q. That is on soft coal?

A. That is on soft coal. Now, every other railroad has the same, so that it "blankets" the northwestern part of a great state and the southern half of a great state. Now, I asked myself the question, and I asked Mr. Lutz the question, "Can I hold a higher rate at Montgomery than the $1.20 rate?" I found I could not, for this reason: If I did not make the $1.20 rate to the industry at Montgomery, I might go out of the coal business there. The Milwaukee wouldn't go out of it from LaSalle to Montgomery, but supposing we both went out of it, would the Northwestern refuse to protect its industry (a flour-mill, I am speaking of now,) at Waseca? If it did, would the Milwaukee ignore it at Wells? If you were to ignore the competition at those points in coal or fuel to enable your manufacturer to make his flour as cheap (and after all these rates have been made in Minnesota somewhat in relation to the rates from the fields in Kansas, to the mills in Kansas, it all enters into the situation) I figured that the roads would make the same rate that they had always made; that is, that a reduction from Duluth would follow,—they told me it would follow. I checked in $1.20 at Montgomery, at Waseca,—if I could have held a rate of $1.50 or $1.70 from Peoria to Montgomery—I am a little ahead. I could have held a $1.70 rate at New Prague, for instance, a local point (New Prague is a point that must get its coal from our railroad, we must ship it in over our road, it is a local point) if I made a rate of $1.70 at New Prague and the Milwaukee makes a rate of $1.20 at Montgomery, where is my New Prague miller? He must "close up his shop"—he tells me he will close his mill. Take Waseca: The Northwestern road can serve the Waseca mill from Duluth, just as the Milwaukee could serve,—we wouldn't think they can but we will grant, for instance, that they might, from Duluth to Montgomery,—

Q. *Via* the Northern Pacific?

A. *Via* the Northern Pacific, yes,—by their own line; but when you come to New Prague, New Prague has no line that can do that independently; Richland hasn't any line that can do it independently, and give the railroad that serves it what it is entitled to, the long haul out of its own business, so we protect those mills there; otherwise, a higher rate at New Prague or Richland, as against Montgomery and Waseca, that have competition, would be absolutely, to my notion, annihilative; it would be, at least, a gross discrimination. Even 5 cents a ton wasn't permitted there,—I tried it once and found from actual experience.

Q. Now, suppose, as a matter of fact, that the new schedule prescribed by the legislature was put into effect and that there were no changes made on the interstate rates into the same territory, what effect would that have upon the business in soft coal at the harbor of Duluth, compared with those harbors that cannot reach this territory except by means of an interstate haul?

A. Well, of course, it would discriminate in favor of Duluth immediately.

Q. What effect would it have on West Superior with respect to that business?

A. It would discriminate in favor of West Superior, Wisconsin, just as it would Duluth.

Q. It would be against that, would it not, if the interstate rate wasn't changed?

A. Yes, but even if these lake ports were not changed, I can't see how it would be possible not to change Superior.

Q. Suppose the interstate rates were not changed.

A. It would discriminate in favor of Duluth.

Q. Now, let us take the carriers. There are three carriers between the Twin Cities; if the interstate rate remained up, it would all go by the local route, would it not?

A. It would all go by the local route. And if you were not to reduce the interstate rates into Minnesota to meet the reduction from Duluth to Minnesota points as fixed by the statute, you would produce an absolute monopoly in favor of Duluth if you could get the coal there. In the first place, I don't think you could get the coal. I know this: you couldn't get the coal at Duluth that would put our mills in competition and let them make flour in competition with Kansas. It would close them up and you would simply move your manufacturing points down into Iowa or Illinois and give them a transit rate that would let them do the same thing out of the state of Minnesota that they do now in the state of Minnesota. In other words, let these rates for all this territory up to the Minnesota state line be 30 per cent lower (30 cents a ton, if you will, lower or 30 per cent lower) than the rates in Minnesota, and what is the result? If your rate is reduced from Duluth to that territory, it throws all of your business to Duluth. Now, can you get at Duluth a coal that will compete for the milling of flour cheap in the southern half of Minnesota as against the finer grades of coal (I don't mean the more valuable grades of coal but I mean the cheaper and finer quality of coal) from the Springfield, Peoria and LaSalle group of mines?

Mr. O'BRIEN: Is the rate from Duluth to the Twin Cities changed?

WITNESS: The rate from Duluth to the Twin Cities is not changed, as I understand it, because they were lower than the statute rate; I am speaking of the southern half of Minnesota, the industries that have been built up there on the lower coal rate; it is the quality of the coal that my experience has taught me is the first consideration. They come to you for the cheapest kind of fuel. Now, that is the first question asked, "Where can we get slack coal? What is the quality of your slack coal? Has it been screened pretty religiously?" They want to get the cheapest coal that they can get, something about 50 to 60

or 70 cents a ton at the mine. We have today in Illinois at one station fifty carloads of fine coal waiting to be billed, no one to take it. Now, that coal is sold at about 50 to 60 cents a ton, and that is the coal that is pressing itself up into these manufacturing industries. Why? Because the man in Missouri and the man in Kansas is using that very kind of coal; the higher grades of coal are not used.

Q. The kind of coal that you have spoken of, the cheaper, steam-making coal, doesn't come *via* the lake ports?

A. It does not.

Q. But with respect to the coal that does come *via* the lake ports, the maintenance of the lower local rates in Minnesota, without a corresponding change from interstate points for the lake coal, would result in forcing all of the business through the port of Duluth and give to it a monopoly of that lake soft-coal business and exclude all other ports from the business and the carriers at the other ports from the business?

A. I don't see how it could figure out any other way practically.

Q. And the inability to bring the interstate coal from the fields below, in the case such as you cite with respect to New Prague, would have the effect of destroying the industry there?

A. That is as the industry has represented it to me—and my judgment confirms it.

Q. And, with respect to your own Company, is it customary or is it practicable, and the unchanged practice, for you to send your cars to Duluth to get coal to haul and place at your industries, such as New Prague and Waseca and Fairfax and the like?

A. It is not; and the Duluth roads have always refused, when we need the coal most, to let their cars be loaded for our road, because we don't send our wheat to Duluth—we have no road to Duluth.

Q. And so far then as your road is concerned, if you haul

any coal you have to haul the interstate coal in, and, in order to get it in, modify the rates to correspond with the local rate prescribed by the statute if that be in force?

A. That is it. If the rate from Duluth, for instance, (the statute rate from Duluth) to Albert Lea would be made $1.46 (the present rate is $1.40) if we reduce the rate from Peoria or from Manitowoc or any other point to Duluth to correspond to the rate to Montgomery, that rate from Peoria to Montgomery would fix the rate north-bound to Albert Lea. Now, if we come to take advantage of the statute advance from $1.40 to $1.46 at Albert Lea, it throws Duluth out of line again; so you have to turn around and reduce your rate from Duluth to Albert Lea under the statute basis to keep a relation of rates, and that would follow. Now, when you get south of Albert Lea on the M. & St. L., down in here and down here on the Iowa Central (pointing), the rate from Duluth to Lake Mills, Iowa, is $1.50, a junction with the Northwestern road; to Mason City, $1.75, a junction with the Rock Island road; Britt, a junction with the Milwaukee, is $1.85; Corwith, a junction with the Iowa Central, $1.85; Livermore, a junction with the Rock Island, $1.85; Luverne, a junction with the Northwestern, $1.85; Humboldt, just below it, $1.85; Fort Dodge, $1.85; Dayton, a junction with the Northwestern, $1.85; Fraser Junction, a junction with the Newton & Northwestern, $1.85; in other words, there is a $1.85 "blanket" on soft coal from Duluth to the territory mentioned. The change to $1.20 at Montgomery makes a change from Peoria to all points on the Iowa Central and the M. & St. L. to Minneapolis, and in making a rate of $1.49 over at Hanley Falls (and it might be made less than that under some conditions if the Northwestern made its rate to Redwood $1.37, but we don't think it will) it puts a $1.50 or $1.49 rate all through this territory and affects the same thirteen counties in Iowa that it would affect on coarse grain.

Mr. O'BRIEN: What is the rate from Peoria to points in

Iowa where you say the "blanket" rate of $1.85 from Duluth applies?

WITNESS: The rate from Duluth into this territory that I have named is $1.85. The $1.85 rate applies from Peoria just the same, so that if you change and make your $1.49 rate over at Hanley Falls, you pull down the entire $1.85 territory. On hard coal I think that you tear down from $2.50 to about $1.75.

I am tired out myself, and I don't believe there is anything else that I care to say about the relationship, except to make it plain (as I did not, I am sure,)—what I want to make perfectly plain is that, as a matter of practice, I cannot hold up my local man at Fairfax, my local man at Richland, my local man at New Prague, my local man at Hartland between these other junctions. It is my place as a traffic man to build up the local man and the local industry so that I can get it all, not build it up where I get half; and for that reason I do give him and will give him, and as long as I am a traffic man will give him, and always have given him, for thirty years, the advantage of competition from all points. I never let a point from off my railroad ship in a thing to a point within six miles of my railroad and wipe a local station out of existence.

Adjourned until Saturday, October 10th, at 10 A. M.

FEDERAL BUILDING, St. Paul, Minn., Saturday, October 10, 1908, the hearing was resumed at 10 o'clock A. M.

ALVIN S. CUTLER,
sworn on behalf of Complainant, testified.

By Mr. BUTLER:

Q. What is your occupation, Mr. Cutler?

A. I am an instructor in the University, engineering department.

Q. In the University of Minnesota?

A. Yes, sir.

Q. And how long have you been so engaged?

A. This is my second year.

Q. And before that what was your occupation?

A. Well, civil engineer, in the employ of various railroads.

Q. Did you ever work for the Minneapolis & St. Louis Railway Company as a civil engineer in its engineering department?

A. Yes, sir.

Q. During what period of time?

A. First in 1900, and again in 1903 and 1904, and again in 1905 and 1906.

Q. And what did you do, that is, did your work require you to become familiar with the physical property of the Company, especially its roadway?

A. Yes, sir.

Q. Who was the Chief Engineer during the period that you worked for the Minneapolis & St. Louis?

A. Mr. H. G. Kelly.

Q. Was Mr. Kelly the Chief Engineer of that Company during all the different years that you were employed there?

A. Yes, sir.

Q. Who is the Chief Engineer now?

A. Mr. Wheeler.

Q. Mr. Kelly is no longer with the Company?

A. No, sir.

Q. He is, I believe, employed by some Canadian company?

A. The Grand Trunk.

Q. With headquarters at Toronto?

A. Montreal.

Q. At Montreal, where he lives?

A. Yes.

Q. You were employed in the work of reporting to the State the Company's estimate of the cost of reproduction of the prop-

erty within Minnesota?

A. Yes, sir.

Q. And the work that you did in that regard was done under the direction of Mr. Kelly?

A. Yes, sir.

Q. And did you follow the plan which was prescribed to you by the State through its Railroad and Warehouse Commission?

A. Yes, sir.

Q. Did you follow the method of analysis of the subject prescribed by them?

A. Yes, sir.

Q. And reported to the Commission on blanks furnished by it and in accordance with the directions indicated by the blanks?

A. Yes, sir.

Mr. BUTLER: A paper captioned "Form 51, Minnesota Railroad & Warehouse Commission, Railroad Appraisal of 1906, Final Summary Sheet", being a blank form, is here marked Complainant's Ex. 27—Cutler and formally offered in evidence. This summary sheet in the work of establishing the cost of reproduction of the railroad property in the state was used in connection with twenty-nine forms of detail sheets, which forms are submitted to the Master and the Court informally without offering them in evidence for use, it being understood that the same may be used by the Master, the Court and counsel, to the same extent as if formally offered in evidence.

Q. Did you gather together the facts to furnish the information required under any of the items referred to in this summary sheet?

A. Yes, sir.

Q. Which items did you actually prepare? You can read them by number and designation.

A. Well, all of 1, land for right-of-way, yards and terminals,

with the exception of the acreage in Minneapolis terminals, which has been corrected since the original report; and No. 2, grading, clearing and grubbing; No. 3, protection work, rip-rap, retaining walls. No. 4,—there was no report.

Q. What was No. 4?

A. Tunnels. No. 5, cross-ties and switch-ties; 6, ballast; 7, rails; 8, track-fastenings; 9, switches, frogs and railroad crossings; 10, track-laying and surfacing; 11, bridges, trestles and culverts; and, in Minneapolis, the item in regard to steel bridges had been corrected since the original report; 12, track and bridge tools; 13, fences, cattle-guards and signs; 14, stock-yards and appurtenances; 15, water-stations; 16, coal stations; 17, station buildings and fixtures; 18, miscellaneous buildings; 19, steam and electric power plants, gas plants, as furnished by the motive-power department, as regards the engines and machinery; 20, general repair shops; 21, shop machinery and tools, as furnished by the motive power department; 22, engine houses, turn-tables and cinder-pits; 23, track-scales; 24, docks and wharves,—there was no report.

Q. Because there are no docks or wharves?

A. No docks or wharves. 25, interlocking plants; 26, signal apparatus; 27, telegraph lines and appurtenances; 28, telephone lines and appurtenances—there was no report given. That included all the items on which I made a report.

Q. That includes everything down to the equipment?

A. Down to article 30.

Q. That is, the first twenty-nine items except the shop machinery and tools, which is item 21?

A. And the machinery and engines in 19, and corrections as noted.

Mr. DURMENT: Well, what was 28?

WITNESS: 28 is telephone lines and appurtenances; no report given.

Mr. DURMENT: What is 29?

WITNESS: 29 is a blank.

Q. Now, in making this report to the State, did you use the detail sheets to which reference has here been made in connection with the summary sheet marked Ex. 27?

A. Yes, sir.

Q. And did you in all cases follow the method indicated to be followed by the blanks?

A. Yes, sir.

Q. And the blanks were furnished by the State?

A. Yes, sir.

Q. That is to say, the State Railroad & Warehouse Commission, through its engineer, Mr. Dwight C. Morgan, furnished to your Company these blanks, and you reported back only as to the items you have given us, the valuations of the Company for each class of items, and the totals indicated upon the summary?

A. For the cost of reproduction only.

Q. Yes, sir, for the cost of reproduction. Now, did you have anything to do with reporting the machinery in the 19th item, or the tools and machinery in the 21st item?

A. No, sir.

Q. Or anything to do with the items below 29?

A. No, sir.

Q. You didn't even extend them or fill out the summary sheet to report them?

A. No, sir.

Q. Now, with respect to item No. 1, "land for right-of-way, yards and terminals": your Company has comparatively a very large amount of right-of-way, yards and terminals at the city of Minneapolis, has it not?

A. Yes, sir.

Q. Did you yourself undertake to pass upon the market value of the lands in Minneapolis belonging to and used by this Company?

A. No, sir.

Q. Your Company, of course, had the ordinary records kept by engineering departments of railroads?

A. Yes, sir.

Q. That is, maps showing the location of the lands, the right-of-way and the like?

A. Yes, sir.

Q. Together with profiles?

A. Yes, sir.

Q. How did you get at the market value of the land in Minneapolis? whose opinion was taken in making the report to the State?

A. That was determined by some men engaged by the Company (real estate experts) to determine its value and report to the Company.

Q. And those men were Lester B. Elwood, F. E. Barney and J. Arthur Ridgeway?

A. Yes, sir.

Q. All of Minneapolis?

A. Yes, sir.

Q. You have here in court the map of the lands of the Company in the city of Minneapolis?

A. Yes, sir.

Q. In blue-print form?

A. Yes, sir.

Q. And with the boundary lines indicated on the map?

A. Yes, sir.

Q. Now, tell us what sums for the market value of the Minneapolis lands were used, classifying as to districts consecutively from one end of the city to the other.

Mr. DURMENT: We will enter an objection that it is incompetent. I don't see the purpose of it; this witness doesn't know, he doesn't pretend to give his judgment as to the value.

Mr. BUTLER: Not at all, but he will give the detail; he has

made certain computations, arriving at the totals on the basis of the opinions of these experts, and we want to get at those sums as applying to each tract and the total, and then we will call the experts and go over the map.

The MASTER: Of course, the testimony fails if it is not supported by further testimony.

A. From Twentieth avenue south to Cedar avenue, 60 cents per square foot; from Cedar avenue to Tenth avenue south $1.25 per square foot; from Tenth avenue south to Seventh avenue south, $2.25 per square foot; from Sixth avenue south to Second avenue south, $3.25 per square foot; from Second avenue south to Second avenue north, $5 per square foot; from Second avenue north to First street north, $3 per square foot; from First street north to Seventh street north, $4 per square foot; from Seventh street north to Lyndale avenue, $1.50 per square foot; from Lyndale avenue to Laurel avenue, 75 cents per square foot; from Laurel avenue to Superior avenue, 50 cents per square foot; from Superior avenue to Franklin avenue, 35 cents per square foot; from Franklin avenue to Twenty-fourth street north, 15 cents per square foot; from Twenty-fourth street west to north line of government lot No. 5, 12½ cents per square foot; from north line of government lot 5 to Lake street, 10 cents per square foot; from Lake street to city limits on the west, 7½ cents per square foot.

Q. That covers it all, does it, Mr. Cutler?

A. Yes, sir.

Q. Consecutively, beginning at the southerly end of Minneapolis?

A. Yes, sir.

Q. And following the trackage through the city to the west city limits.

A. Yes, sir.

Q. Now, you computed the areas in Minneapolis?

A. Yes, sir.

Q. And in computing the areas, what did you include? It is observable by the map of the right-of-way that the lines of this Company cross a good many streets, and also, along some parts of the route through the city of Minneapolis, occupy, in whole or in part, a good deal of street land longitudinally. Now, I want you to indicate to the Master what, in the computation and report that you made, you included in your areas to which you applied these unit prices per square foot, section by section, through the town.

A. Well, I included everything shown inside of our right-of-way lines, including in some places street crossings where the street was overhead on a bridge, and in some places where the tracks are partly in the street.

Q. What streets did you include or what parts of them?

A. Included the crossing of Franklin avenue, Superior avenue.

Q. That is, the crossing of Superior avenue?

A. Yes, sir, where they cross Superior avenue. There is another street crossing given, I don't know which one that is.

Q. Well, it is the street crossing in the Spring Lake Addition?

A. Yes, sir, between blocks 1 and 3.

Q. The map does not indicate the name of that street.

A. Across Ontario avenue, and the street between Spring Lake addition and Groveland addition; it included Emerson avenue, Laurel avenue—

Q. The crossings, you are speaking of?

A. Yes, sir, the crossings entirely. And the street in Groveland addition between blocks 41 and 43; Hawthorne avenue, Colfax avenue, Bryant avenue, Linden avenue, Aldrich avenue, Lyndale avenue, Chestnut street, Seventeenth street north, First avenue north, Western avenue, Twelfth street north, Second avenue north, Eleventh street north, Seventh street north, Sixth street north, Fifth street north, Fourth street north,

Third street north, Washington avenue north, Second street north, Third avenue north, First street north, Second avenue north, First avenue north, Hennepin avenue, First avenue south, Second avenue south, First street south, Fourth avenue south, a portion of Fifth avenue south, Eighth avenue south, Ninth avenue south, Tenth avenue south, Eleventh avenue south, Twelfth avenue south, Thirteenth avenue south, a portion of Cedar avenue.

Mr. DURMENT: Those are the crossings?

WITNESS: Yes, sir.

Q. You have referred to nothing yet but crossings, have you?

A. That is all.

Q. You have referred to nothing but crossings. In your answer to Mr. Durment's question you have named only street crossings in your areas to which you applied the unit prices furnished by the real estate experts. Did you include any areas in streets occupied longitudinally by the Company?

A. No, sir.

Q. In your computation you didn't include any areas where the tracks occupied streets longitudinally?

A. No, sir, I did not.

Q. You have the detail of the figures upon which your computations were made?

A. Yes, sir.

Mr. BUTLER: We will say we would be glad to submit them to the other side, if it is desired by them, that they have opportunity to examine, tract by tract and step by step, as the figures were made up.

Q. Complainant's Ex. 28 is a copy of the summary sheet transmitted by the Company to the State in connection with the detail sheets filled out, referred to heretofore, and also in the summary?

A. Yes, sir.

Mr. BUTLER: We offer that summary in evidence.

Mr. DURMENT: We have no objection to it being received in evidence for the purpose of reference and for the purpose of this witness testifying with reference to it. We object, of course, that it is no evidence of the values as yet, until something further is shown.

Q. Ex. 29 is shown to the witness. Mr. Cutler, describe to the Master what exhibit 29 shows.

A. The first column shows the location of the different areas included in the right-of-way in Minneapolis.

Q. The whole Exhibit relates to the right-of-way values in Minneapolis?

A. Yes, sir. The second column shows the total square feet owned in Minneapolis.

Q. Against each tract?

A. Yes, sir.

Q. And the next column gives the average market value per square foot corresponding to each location and area?

A. Yes, sir.

Q. Those are, of course, figures furnished by the real estate experts?

A. Yes, sir.

Q. And the next column?

A. Shows "Factor average right-of-way value per square foot," which is multiplied by the average market value per square foot.

Q. In most of the instances I observe that it is 1.25, (which means an addition of 25 per cent to the market value,) to get at the right-of-way value.

A. Yes, sir. Then the next column is the total market value of the right-of-way in dollars. The last column is the total right-of-way value in dollars. The last column is the next to the last column multiplied by the factor percentage of 1.25, or whatever is indicated in the fourth column.

Q. And that would give you the total market value in Minneapolis of how much money?

A. $4,556,298, as finally corrected.

Q. You say that the market value as shown on Ex. 29, $4,556,298, is the market value of the land used by the Company in Minneapolis on the areas and at the prices indicated on this exhibit?

A. Yes, sir.

Q. Now, were the areas which you originally indicated, including these street crossings to which you have referred in one of your answers a little while ago, included in the areas indicated on Ex. 29, or were they excluded therefrom?

A. Well, the total area as given on this Ex. 29 has had deducted from it street crossings which have not been legally vacated.

Q. That is to say, does Ex. 29 show the areas before the corrections to which you have referred were made, or after the corrections?

A. After the corrections.

Q. Then, after the original report to the State which did include the street crossings, objection was made by Mr. Morgan for the State—

A. Yes, sir.

Q. —as I understand, to such inclusion.

A. Yes, sir.

Q. And thereupon that which he claimed ought to be excluded from the areas was excluded; is that it?

Mr. DURMENT: We object to that as calling for a conclusion and incompetent.

A. I am not sure whether the objections which he made to all of the crossings were excluded from this report or not.

Mr. BUTLER: We offer in evidence Complainant's Ex. 29; and we will pass from that now, and I think we can get the areas agreed upon later on.

Mr. DURMENT: In order to save the record, we don't object to this being admitted for the purpose of reference, and his testifying concerning it, or his knowledge concerning the matter as to how it was made up, but we don't concede that it is of itself any evidence of the value at this time.

Q. The figures $5,709,362, is the total right-of-way value, arrived at by applying the factor indicated upon Ex. 29?

A. Yes, sir.

Q. And that factor was, in all cases excepting three, 25 per cent added?

A. Yes, sir.

Q. And in two of the other three it was 50 per cent added?

A. Yes, sir.

Q. And these two instances are out near the edge of the city where the market value of the land is low?

A. Yes, sir.

Q. Out near Hopkins. And the third case indicated on the exhibit as "10," what was added there? I don't understand that. There is no decimal point.

A. No factor was added.

Q. That is, in all cases a factor of 25 per cent was added excepting two, out near Hopkins; there 50 per cent was added; and in one instance there was no factor added?

A. Yes, sir.

Q. Now, with respect to Ex. 28, I call your attention to item 2, grading, clearing and grubbing, $2,551,690; how did you get at that figure?

A. For the grading the amount of excavation and embankment was determined in nearly every case by scaling the original profiles of the line. On one division, from Winthrop to the state line south, we had the actual units of paid quantity. Then, for the clearing and grubbing, that was determined by simply noting in the field the locations where the line had passed through timbered country, and the length was taken

and the width of the right-of-way and the acreage computed.

Q. And that was all done in detail?

A. Yes, sir.

Q. In the figure for grading, $2,551,690, item 2, in making your report did you include anything for the solidification or adaptation of the roadbed?

A. Yes, sir.

Q. What do you understand by "solidification and adaptation of the roadbed"?

A. Well, when a new line is originally constructed the line is sometimes—usually—put into operation before it is entirely finished, and in all cases there is a settlement of the embankments and a washing down of the slopes of the cuts, and also, in a great many cases, a filling up of the waterways, the culverts and the drains (the side-drains) so that it is necessary (to put the road into proper condition) to raise the track, pick it up, bring it up to its original grade-line, and, in some cases, to widen the embankments—fill up the shoulders—and to clean out the ditches and to trim up the cuts, so that the track will get its proper drainage and will be in proper condition for operation.

Q. What amount or rule did you follow in including in your unit prices for grading this element for solidification and adaptation?

A. We included 15 per cent of the cost of the grading.

Q. Now, is it the uniform experience that in building a railroad there is the necessity of doing this work that you have described and for which you allowed 15 per cent of the unit price for grading?

A. In practically every case.

Mr. BUTLER: As I understand, Mr. Durment will admit that, including $608,896, established by the Commission through Mr. Morgan—

Mr. DURMENT: No, I don't admit that in that way.

Mr. BUTLER: Well, established by Mr. Morgan, the engineer employed by the Commission to establish the cost of reproduction, item 2 on Ex. 28, to-wit, grading, clearing and grubbing, $2,551,690, is right.

Mr. DURMENT: Well, I will admit that including $608,896 for solidification of roadbed—which is the figure that Mr. Morgan, the State Engineer, has estimated is the value of that—then $2,551,690 shall be taken as the cost or value of reproducing the grading, clearing and grubbing.

Mr. BUTLER: That covers that.

Mr. DURMENT: Of course, we don't concede that the item $608,896 is proper to be taken into account; but if proper to be taken into account, the amount is right. We will concede that the item $52,240 for item 3 is the proper amount to be taken in this case.

The MASTER: Item 3 conceded?

Mr. DURMENT: Yes, item 3. Item 4 is conceded. We claim item 5 to be $971,641.

Mr. BUTLER: We claim it to be $1,172,229, leaving a difference of $200,588.

Mr. DURMENT: We concede your figures on ballast; that is item 6.

Mr. BUTLER: Item 6, ballast, $357,855.

Mr. DURMENT: We concede that as the correct value. The item 6, ballast,—Mr. Morgan's figures, made at the time he made his examination and valuation, exceed that amount by $21,860,—due in part, at least, to the fact that between the time when the Railroad Company had made its valuation and the time when Mr. Morgan examined the road and made his valuation, the Railroad had ballasted more of its track, and his figures include ballasting at a later date than these values fixed by the Railroad and additional work. There may have been some difference in his allowances for the work on the other; I don't know.

Mr. BUTLER: It may be conceded, I take it, that the report made by the Company, as evidenced by Ex. 28, relates to the date June 30, 1906; that is, the end of the fiscal year of 1906?

Mr. DURMENT: Yes.

Mr. BUTLER: Item 7, rails?

Mr. DURMENT: We concede that the proper figure to be taken on this item is $1,540,392, as contained in the Railroad's report. The examination of the properties and the estimate of the rails was made by Mr. Morgan the year following the report on which Mr. Cutler's testimony is based, or at least afterwards, and there had been laid additional heavy rails on some portions of the track before he made his estimate and his figures include that additional or new rail that had been laid after their estimate, increasing the amount $14,368.

Mr. BUTLER: Giving his figure at what amount?

Mr. DURMENT: Well, that would be $1,554,760.

Mr. BUTLER: Track fastenings, item 8, is claimed by us at $266,480.

Mr. DURMENT: In this case the railroad value is $266,480, Mr. Morgan's figures were $250,641, the difference $15,839.

Mr. BUTLER: $258,561 is midway between us.

Mr. DURMENT: And this latter figure is conceded. It is agreed by both sides that is the proper figure to take.

Mr. BUTLER: Yes, sir. Item 9, switches, frogs and railroad crossings,—claimed by the Company at $72,447.

Mr. DURMENT: Well, we will divide that difference with you.

Mr. BUTLER: What is your figure?

Mr. DURMENT: $61,204.

Mr. BUTLER: That item may be taken at $66,807.

Mr. DURMENT: That is agreed.

Mr. BUTLER: Item 10, track-laying and surfacing; the parties cannot agree. The Railroad Company claims $448,742. The State claims—?

Mr. DURMENT: $251,918.

Mr. BUTLER: The difference?

Mr. DURMENT: $196,824.

Mr. BUTLER: Item 11, bridges, trestles and culverts,—the parties cannot agree. The Railroad Company claims $1,153,-398.

Mr. DURMENT: The State claims $799,107; the difference is $354,291.

Mr. BUTLER: Item 12, track bridge tools?

Mr. DURMENT: We concede that the item should be $27,791.

Mr. BUTLER: Exact correspondence, this time, between the estimates. Item 13, fences, cattle-guards and signs. The Company claims $142,175.

Mr. DURMENT: The State claims $141,038,—a difference of $1,137. We will split it.

Mr. BUTLER: The parties split the difference and agree at $141,606. Am I right, Mr. Durment?

Mr. DURMENT: That is right.

Mr. BUTLER: Stock-yards and appurtenances; the Company claims $65,825.

Mr. DURMENT: The Defendant claims $45,583. The difference is $20,242. We'll split it with you.

Mr. BUTLER: We'll split the difference and agree upon the valuation at $55,704; am I right?

Mr. DURMENT: All right.

Mr. BUTLER: Water stations: the Company claims $91,-951.

Mr. DURMENT: The State claims $69,323; difference $22,-628. We'll split it with you.

Mr. BUTLER: All right. That may be conceded at $80,637. Item 16, coal stations: the Company claims $25,682.

Mr. DURMENT: The State concedes it.

Mr. BUTLER: What did you make it at?

Mr. DURMENT: The same thing.

Mr. BUTLER: Another case of correspondence exactly. Item 17, station buildings and fixtures: the Company claims $248,836.

Mr. DURMENT: The Defendant claims $230,032; the difference is $18,804. We'll split that with you.

Mr. BUTLER: That may be conceded at $239,434. Miscellaneous buildings: the Company claims $34,844.

Mr. DURMENT: The Defendant claims $30,959,—a difference of $3,885. We'll split the difference.

Mr. BUTLER: Item 18, miscellaneous buildings, may be found at $32,901. Item 19, steam and electric power plants, gas plants,—claimed by Company $58,050.

Mr. DURMENT: The State concedes that to be the correct figure. The valuation made by Mr. Morgan was made after the road's figure was made, and when there had been some additional equipment of that character added, according to their report, and including the additional equipment his figure was $62,528, an increase of $4,478.

Mr. BUTLER: Item 20, general repair shops, claimed by Company, $180,838.

Mr. DURMENT: Claimed by the State $180,338, a difference of $500.

Mr. BUTLER: Split the difference?

Mr. DURMENT: Yes.

Mr. BUTLER: Item 20 may be found by the Master at $180,588. Item 21, shop machinery and tools, $103,675 is the amount claimed by the Company.

Mr. DURMENT: The Defendant claims $100,075, a difference of $3,600.

Mr. BUTLER: We'll split. This may be found at $101,875.

Mr. DURMENT: We will agree to that.

Mr. BUTLER: Item 22, engine houses, turn-tables and cinder-pits,—the Company claims $152,180.

Mr. DURMENT: The Defendant claims $144,427,—a differ-

ence of $7,753,—which we will split.

Mr. BUTLER: All right. It may be found, then, by the Master that item 22, engine houses, turn-tables and cinder-pits be $148,303. Track scales,—the Company claims $10,500.

Mr. DURMENT: The Defendant claims $6,342,—a difference of $4,158.

Mr. BUTLER: Split again?

Mr. DURMENT: All right.

Mr. BUTLER: Item 23 may be found by the Master at $8,421. "Docks and wharves" is agreed to.

Mr. DURMENT: Yes, no dispute about that.

Mr. BUTLER: Item 25, interlocking plants,—$18,548 is claimed by the Company.

Mr. DURMENT: $12,800 is claimed by the defense,—a difference of $5,748. We'll split.

Mr. BUTLER: All right. The item may be found by the Master (item 25) interlocking plants, at $15,674. Item 26, signal apparatus,—claimed by the Company $2,594.

Mr. DURMENT: The Defendant concedes it; same figure.

Mr. BUTLER: Item 27, telegraph lines and appurtenances, —claimed by the Company at $27,109.

Mr. DURMENT: The defense concedes it; we have the same figure.

Mr. BUTLER: Item 30,—the Company claims for engineering, 3 per cent on the total of the first twenty-nine items on Ex. 28. The State has not subdivided in that manner. The Company claims for superintendence 2 per cent on the total of the first twenty-nine items on Ex. 28; the State has not divided, as we understand, on that basis. The Company claims legal expenses, 5 per cent on the total of the first twenty-nine items, and the State allows in its estimate 4½ per cent as the total for engineering, superintendence and legal expenses. Item 31, —locomotives,—claimed by the Company as chargeable to Minnesota $698,163; the parties are not agreed, and the State claims—

Mr. DURMENT: $563,217,—a difference of $124,946.

Mr. BUTLER: That will probably have to have testimony. We may reconcile our differences. Item 32, passenger equipment chargeable to Minnesota,—claimed by the Company at $341,670.

Mr. DURMENT: Claimd by the State at $340,343.—a difference of $1,327. Split the difference.

Mr. BUTLER: The Master may find item 32, passenger equipment, at $341,006. Item 33, freight-car equipment,—the Company claims $1,998,345.

Mr. DURMENT: The defense claims $1,847,949,—a difference of $150,396.

Mr. BUTLER: The parties are not yet agreed. Item 34, miscellaneous equipment,—the Company claims $86,938.

Mr. DURMENT: The defense claims $77,850,—a difference of $9,088.

Mr. BUTLER: We will leave that open, because it works in with the freight equipment.

Adjourned until Wednesday, October 14th, at 10 A. M.

FEDERAL BUILDING, St. Paul, Minn., Thursday, October 15, 1908, the hearing was resumed at 10 A. M.

ALVIN S. CUTLER,
recalled on behalf of Complainant, testified.

Mr. BUTLER: With respect to Ex. 28, item 38, (stores and supplies in Minnesota,) is claimed by the Company, as of date June 30, 1906, to have been $238,589.

Mr. O'BRIEN: I understand that item will not be disputed.

Mr. BUTLER: With respect to item 36, the Company claims to be entitled to one-half of one per cent (that is, five-tenths of one per cent) on account of freight on construction material and equipment, that to be figured on items 1 to 36 inclusive.

Mr. O'BRIEN: That cannot be conceded by the State.

Mr. BUTLER: In Ex. 28 no separate figure is stated for item 36. The items 36 and 37 are carried together, and are as follows: Freight on construction material and equipment .5 of one per cent; interest during construction 3 per cent; organization, 1½ per cent; contingencies 5 per cent; total 10 per cent on items 1 to 35 inclusive; which, on the report, aggregated $19,642,370; 10 per cent of which would be $1,964,237. What will you concede on that?

Mr. O'BRIEN: Well, we think that that item cannot be conceded and that it had better stand as your claim, and we will give the estimate of what we consider it should be. There is no objection to stating what we shall claim as the total amount of items 36 and 37; it will be $1,726,915. It is impossible for us to concede the aggregate amount charged for items 36 and 37, for the reason that the computation made by the Complainant is based upon the aggregate of the items from 1 to 35, and their aggregate for those items amounts to some millions of dollars more than our aggregate for the same items; but we can state that while the total amount computed by the State for the items 36 and 37 is $1,728,680.93, that amount is made up as follows; for item 36 (that is freight on construction material and equipment) Mr. Morgan computes the amount to be $137,988.71. As to item 37, Mr. Morgan's computation, which we expect to introduce in evidence, is based as follows: Interest during construction and organization, 4 per cent; contingencies 5 per cent.

Mr. BUTLER: As I understand that, that applies the 9 per cent to get the item at 37, and furnishes the exact figure for the item 36 but does not indicate it on any percentage basis, whereas, in our claim, items 36 and 37 were taken together at 10 per cent.

The MASTER: Then, do I understand you agree on a compromise, or let it stand on the evidence?

Mr. BUTLER: Well, I will want to look at that. I think there is very little difference between us. I think it amounts to about 10 per cent.

The MASTER: I didn't know but perhaps you could agree upon a figure, as a matter of compromise.

Mr. O'BRIEN: If we could take those percentages on the same basis there would be very little difference between us, but the trouble is that we are computing 9 per cent on $14,638,920, and they are computing 9½ per cent on $19,642,370.

The MASTER: Well, the best way to do is, without conceding the correctness of the computation of either, as a matter of compromise we will fix the figure at so much.

Mr. O'BRIEN: And our allowance for item 36 is nearly $40,000 larger than their claim for it, and in that way we come nearer agreeing, although on the total we are separate some—

Mr. BUTLER: We lose a half per cent on the item 37, but we pretty nearly make it up on the 36 in the aggregate figures.

Mr. O'BRIEN: But in the aggregate figures we are apart $237,322.

Mr. BUTLER: That is largely because of the base.

The MASTER: I guess you will make that figure definite.

Mr. O'BRIEN: No, unless there is a great deal of change made, that figure can't be agreed upon.

Mr. BUTLER: The difference of percentages is only half a per cent, as has been stated, and your Honor in making up the value of the 35 items will make up the base.

I call Mr. O'Brien's attention to item 30, claimed by the Company at 5 per cent on the total of items from 1 to 29, inclusive. On Saturday it appeared that the State's claim was 4½ per cent on the same items, to-wit, No. 1 to 29, inclusive. The Complainant is willing to consent that that figure may be found by the Master as 4¾ per cent, which is half way between us.

Mr. O'BRIEN: That item is purely an estimated one, and a matter of opinion as between 5 and 4½, and we are willing,

for the purposes of this case, that the Master should assume that 4¾ per cent is the proper basis.

The MASTER: Splitting the difference, as we did the other day, so much.

Mr. BUTLER: Now, there are some differences with respect to item 31, the value of the locomotives. In getting at the value of the locomotives, the whole number owned by the Company were taken into account and then apportioned to Minnesota on the basis of the locomotive mileage in Minnesota to the total locomotive mileage of the system, and there is a difference between us on the basis of valuation; but I think we used the same percentage for apportionment. Are you willing to state, gentlemen, what the total valuation of the locomotives was and the percentage used for apportionment to Minnesota? Our total valuation was $1,088,500, and we apportioned on the basis of 64.14 per cent to Minnesota.

Mr. O'BRIEN: With regard to item 31, locomotives, the State expects to establish that the number of locomotives owned by the Minneapolis & St. Louis Railroad Company at any time connected with this inquiry was 97; that the proportion of the aggregate value of those locomotives which should have been charged to Minnesota on the 30th day of June, 1906, was 64.14 per cent of the total; that during the year ending June 30, 1907, the mileage of the road outside of Minnesota was increased, and that the proper percentage of the total value of the locomotives chargeable to the state of Minnesota upon the 30th day of June, 1907, (which is the date used by Mr. Morgan in making his estimate) was 59.76; and the aggregate value which we claim for the locomotives upon both those periods is $959,197.83.

Mr. BUTLER: That indicates a difference in the value of $129,302.17.

Mr. O'BRIEN: That is right.

Mr. BUTLER: With respect to Ex. 28, which is the summary of valuation made by the Railroad Company to the Defendants,

the railway commissioners, the valuation there returned was as of the date of June 30, 1906. The concessions that have been made on the record with respect to that exhibit were understood by us, unless in some instance the contrary expressly appeared, to relate to the valuation of the items referred to as of that date.

Mr. O'BRIEN: We had understood that where the total of an item was accepted, or the difference in the totals claimed by the respective parties was split and a compromised total accepted, that that was final as to that item, and without regard to what date should be taken by the Master as the proper date upon which to base the valuation of the road that the item as agreed upon should be carried into the Master's report for that date. It may be that no great difference will arise practically from this misunderstanding, but, of course, we shall be compelled to reserve the right to modify any concession made if it appears that this difference as to dates affects the total of such item, and unless that does become necessary from that cause we will, of course, still try to agree on the item without any additional testimony.

Mr. BUTLER: That is, it amounts to this, as I understand Mr. O'Brien's position: That if upon examination of the figures disclosed in the record, about which we have stipulated and agreed in part, they feel that, by reason of the difference of understanding between us as to the date they ought to do so, they will reserve the right to offer testimony upon that point and not be bound by that admission.

The MASTER: Perhaps it is proper for the Master to state that he understood the matter as it was understood by the Defendant, but the Master is also satisfied that the Complainant in this case did not understand the basis on which the concessions were being made, and therefore it is proper for them to modify by evidence, if they so desire, the items which were before conceded.

Adjourned until Friday, October 16th, at 10 A. M.

FEDERAL BUILDING, St. Paul, Minn., Friday, October 16, 1908, the hearing was resumed at 10 A. M.

ALVIN S. CUTLER,
recalled on behalf of Complainant, testified.

By Mr. BUTLER:

Q. Mr. Cutler, with respect to the acreage in Minneapolis terminals referred to in our Ex. 29, did you at the time of the report to the State compute the total acreage, including the areas of the street-crossings which you have mentioned?

A. Yes, sir.

Q. Was the acreage reported by you, included in Ex. 28 and which was included as a part of item 1, changed subsequent to the making of the report?

A. Yes, sir.

Q. As to the area in Minneapolis—

A. Yes, sir.

Q. —increased or diminished?

A. I cannot state exactly; it was increased in some places, and decreased in others.

Q. As modified, what is the total acreage?

A. 105.59 acres.

Q. Did that include street-crossings?

A. Yes, sir.

Q. And what was the aggregate area of the street-crossings so included?

A. 1.81 acres.

Q. It did not include any land within the boundaries of the streets, which land was occupied longitudinally by the railroad?

A. No, sir.

Q. Is there any such land in Minneapolis so occupied by the St. Louis Company?

A. Yes, sir.

Q. In what street?

A. Second street south.

Q. And have you computed the area of the land so occupied in the streets longitudinally by the Company?

A. Yes, sir.

Q. And what is the area?

A. 1.97 acres.

Q. So then, as I understand it, the total acreage 105.59, which included street-crossings, did not include the occupation of streets longitudinally?

A. Yes, sir.

Q. And 1.81 acres was the area of the crossings, and 1.97 was the area of the streets used longitudinally?

A. Yes, sir.

Q. You may describe in the record just where in Minneapolis the longitudinal occupation of the streets existed which was not included in the 105.59 acres.

A. The longitudinal occupation not included in the 105.59 acres is between Fourth avenue south and Tenth avenue in Second street south.

Q. Now, I observe by this map (blue-print) that a part of the distance the street is occupied to its full width, a part of the distance it is occupied by two tracks and a part of the distance by only one track. How did you compute the area so occupied, did you include the full width of the street, or only the part of the street so occupied?

A. A part of the street only.

Q. Now, where there is a single track, how much did you take?

A. Well, in every case there are two tracks or more.

Q. Well, there are not two tracks below Ninth street in Second?

A. There really is, but it is not shown here.

Q. There is, in fact, but it is not shown?

A. Yes, sir. From Fourth avenue south to Sixth avenue south I used a width of 26 feet.

Q. That is, the two tracks?

A. Covering two tracks.

Q. That would be thirteen feet to a track?

A. Yes, sir.

Q. And where tracks are laid side by side, it is usually about the standard construction to make them thirteen feet centers?

A. In this yard it is, yes, sir, practically.

Q. And that is common, isn't it?

A. Yes, sir.

Mr. BUTLER: Thirteen or fourteen feet is about the thing, isn't it, Mr. Morgan?

Engineer MORGAN: Yes, that is right.

WITNESS: From Sixth avenue south to Eighth avenue south I used a width of 55 feet, and from Eighth avenue south to Tenth avenue south I used a width of 33 feet.

Q. That was on the basis of thirteen feet to a track, was it?

A. Well, approximately that.

Q. Now, I call your attention to page 1 of Ex. 29; that relates to the value of the Minneapolis land terminals. The total is $4,556,298 under the column "Market Value," and under the column "Right-of-Way Value," $5,709,362. You have heretofore testified that you applied to the areas in question the prices furnished by the real estate experts, Mr. Elwood, Mr. Ridgeway and Mr. Barney. Now I desire to ask you what areas were taken into account in getting the figures which I have just called attention to as the totals of the Minneapolis yard property.

A. The areas shown in the column headed "Total square feet owned" in Ex. 29.

Q. And, reduced to acres, what acreage?

A. The total acreage is 105.59.

Q. That would include, then, the 1.81 acres which was included in the street crossings?

A. Yes, sir.

Q. But would not include the 1.97 acres in Second street where that street is occupied longitudinally?

A. No, sir; it would not include it.

The MASTER: In short, any portion of these streets occupied longitudinally has not been considered as an item of valuation?

Mr. BUTLER: That is it, your Honor.

Mr. O'BRIEN: The State will claim that the total acreage of the Minneapolis terminals of the Minneapolis & St. Louis Railroad Company is 102.53 acres.

Mr. BUTLER: Does that include the areas in street crossings or not?

Mr. O'BRIEN: That, of course, is upon the theory that no portion of the streets occupied by the Company should be included except only where a street has been vacated and the complete use of it given to the Company; in such cases the acreage of those streets is included.

Mr. BUTLER: That would make an apparent difference between us on the same basis of figuring—

The MASTER: Of about how much?

Mr. BUTLER: —about one acre and $^{24}/_{100}$ of an acre, eliminating the areas of the street crossings and any streets occupied longitudinally.

Now we offer in evidence an ordinance of the city of Minneapolis, passed December 28, 1870, approved December 30, 1870, entitled, "An ordinance granting the right-of-way over certain streets in Minneapolis to the Minneapolis & St. Louis Railway Company."

Q. Now, Mr. Cutler, can you take the map and indicate to the Master what part of the 1.97 acres in Second street is covered by this ordinance? The names of the streets have been changed since, I think.

A. Yes, sir.

Q. And you have examined the records to ascertain the boundary lines of the area in question, have you?

A. Yes, sir. That ordinance covers the area occupied in Second street, (this is Second street) from Fourth avenue, which is called California street in the ordinance, down nearly to Eighth avenue, which is called Ames street in the ordinance.

Q. It does not include the area included in your 1.97 acres where two tracks are laid between Eighth and Tenth?

A. No, sir.

Q. Those two spurs?

A. No, sir.

Q. But it includes everything else except the two spurs from Eighth to Tenth in Second street?

A. Yes, sir.

Q. And do you know how much in area it would be down to that point?

A. The acreage occupied in Second street south between Fourth avenue and Eighth avenue which is covered by the ordinance amounts to 1.36 acres.

Mr. BUTLER: The substance of the ordinance which has been offered in evidence is this: that it grants to the St. Louis Railway Company, its successors and assigns, the privilege to lay not to exceed two tracks of their railroads across and along the following named streets in the city of Minneapolis, lying between the present track of the St. Paul & Pacific Railroad and the levee, so-called, in the city of Minneapolis, to-wit, across Itasca street east of First street, thence proceeding southeasterly along the street running between blocks 1 and 10,—is that Second street?

WITNESS: No, sir, that is River street.

Mr. BUTLER: —to and across the street intersecting the river at suspension bridge between High street and the Mississippi river, along Water street in Steel's Addition to Min-

neapolis, across Oregon street, First street, California street, along Second street eastwardly of California street to and across Russell street, across Ames, Rice, Smith, Pearl, Hay, Hanson, Lake and Cedar streets in said city of Minneapolis, and along and across Bluff street, across Oak street, and along and across Walnut street in Hancock & Rice's Addition to Minneapolis, across Second street and Washington avenue in said addition, to and along and across Elm street in the city of Minneapolis, to and along the levee to the lower or southeasterly end thereof in said city. I think that covers the granting part. Certain conditions are imposed with respect to grading, bridging and planking. The privilege of conveying passengers and freight over the tracks in question is included, and certain regulations for safety, like signal bells and the like.

Q. I call your attention to item 10 of Ex. 28, track-laying and surfacing, shown in Ex. 28 to be $448,742, and it was stated by Mr. Durment that the claim of the State for that item was $251,918, leaving a difference of $196,824. What sum per mile for track-laying was included? and tell us how you got at the price.

A. The price per mile was $890.

Q. Did your Company, about the time of this report, lay any track?

A. Yes, sir.

Q. Where?

A. In South Dakota.

Q. How much?

A. About 250 miles.

Q. And that was in the year 1906 or 1907, or both?

A. In both years.

Q. You were then in the engineering department of the Company?

A. Yes, sir.

Q. And were conditions with respect to track-laying out

there substantially the same that they would be in reproducing the road of the Company in Minnesota?

A. I think so.

Q. So far as the track-laying was concerned. Now will you tell us the elements included in the figure $890?

A. It was made up of three elements. The first was the contract price for laying and surfacing, which was $490 a mile; the second was the material-yard expense, which was $130 a mile, and the third is the train service in connection with the track-laying, which was $270 a mile.

Q. $490 was the contract price that year for the laying and surfacing of the track in South Dakota?

A. Yes, sir.

Q. Who had the contract?

A. Winston Brothers Company, of Minneapolis.

Q. That did not include the material-yard or the train service?

A. No, sir.

Q. But there was paid to them for the work of laying the track, after the material was brought to the place in question, $490?

A. Yes, sir.

Q. Per mile of track?

A. Yes, sir.

Q. Now, what is the function of a material-yard?

A. Well, in track-laying, especially for as large a piece of work as that, some of the material at least must be brought to the material-yard before the time of the actual track-laying begins, and it must be unloaded from the cars and piled in the yard, both the rails and the ties and the fastenings, and while it is in the yard part of the ties must be stripped, and then the entire material must be again loaded on to the construction trains to be carried forward to the track-laying machine.

Q. Is that what was actually done on this Dakota work?

A. Yes, sir.

Q. And is it a proper and necessary thing to do in track-laying?

A. Yes, sir.

Q. And when you reduced the material-yard expense to dollars per mile of track laid, the expense was $130 per mile of track?

A. Yes, sir.

Q. That involved loading and unloading of rails?

A. Yes, sir.

Q. Loading and unloading of ties?

A. Yes, sir.

Q. And the peeling of ties?

A. Yes, sir. Also the actual expense necessary to construction and maintenance of the yard.

Q. Now, have you been able to get at substantially how much per ton that would be for the handling, the loading and unloading of these rails and ties?

A. Yes, sir, approximately.

Q. How much?

A. About 17 cents per ton.

Q. About 17 cents per ton for one handling, or, for the loading and unloading, both?

A. For the entire handling of the material.

Q. That is for handling the rails twice and for handling the ties twice, and, in addition to the ties, sufficient to peel them?

A. Yes, sir.

Q. Reducing the amount of the material handled through the yard to tons, the total yardage charge against the material would be about 17 cents per ton?

A. Yes, sir.

Q. The train service item was what, per mile of road?

A. $270.

Q. Now, will you describe more fully just what that means?

A. Well, that includes the actual pay-rolls of the traincrews engaged in hauling the material from the material-yard out to the track-laying machine; also the actual pay-roll of the men on the track-laying machine, of the trainmen on the track-laying machine, and repairs and fuel, oil and waste, and all the expenses connected with the trainservice.

Q. It didn't include anything for trainservice except from the yard to the point of laying?

A. That is all.

Q. Nothing for transportation over the line from here or Minneapolis to Watertown?

A. No, sir.

Q. That is not included, but simply from the yard out?

A. Yes, sir.

Q. Does it include anything for wear and tear on the equipment?

A. No, sir.

Q. Or for the repairs of cars or engines broken or damaged or destroyed in the course of the work?

A. It covers the repairs to equipment on the work.

Q. But anything for the depreciation of the value of the equipment by reason of the use?

A. No, sir.

Q. Now, I call your attention to item 11 on Ex. 28, bridges, trestles and culverts, your figures being $1,153,398, and it having been stated by counsel on last Saturday that the State's claim was $799,107, a difference of $354,291. Mr. Cutler, in establishing the figures so reported, what unit of cost—how was the cost made up? Describe that in detail to us, so that if we were sufficiently intelligent we could go out and measure a bridge and get the cost of it.

A. First, the number of feet, board measure, per panel, the length of the bridge, was determined.

Q. That is, you took the number of feet of lumber, board

measure, for the entire length of the bridge?

A. For a panel, which averaged about fourteen feet.

Q. That is a span, as sometimes called?

A. Yes, sir, it is a span, including one bent.

Q. It is a span including one bent or half of two,—which would come out the same way, wouldn't it?

A. Yes, sir; and applying to that the cost of the material and also the cost for framing. And then the same thing is done with the piling; the number of lineal feet of piling per bent is determined, and the price per lineal foot for the material. And then the price per lineal foot for driving the piling. Also the cost of overhaul on both the timber and the piling.

Q. Now, were these unit prices applied to the quantities in each particular bridge in Minnesota, or were the quantities in all the bridges in Minnesota totaled and the unit prices applied to the total quantities?

A. It was applied to each division or section as it was made up, to the total quantity.

Q. That is, you took it by divisions or sections, did you?

A. Yes, sir.

Q. Well, now, give us the divisions or sections that you divided the problem into, as far as bridges and trestles are concerned.

A. The Minneapolis yard, the Albert Lea division, the Western division, the Southwestern division, the Pacific division and the Southern division.

Q. Now, will you state the unit prices charged for each of the elements?

A. For the material and the labor?

Q. For the material and the labor that goes in to build up the whole figure, overhaul and everything.

A. The lumber at $29.25 a thousand feet, board measure, Minneapolis; the piling at 28 cents per lineal foot, Minneapo-

lis; the labor in framing the trestle or the bridge $10 per thousand feet, board measure; the labor of driving the piling, 25 cents per lineal foot; and the overhaul on timber was taken as an average length of overhaul of 17 miles at 75 cents per thousand feet per mile, and the overhaul in the piling is the same (17 miles) at one cent per foot per mile; and then to that was added the actual cost of the iron which went into the structure, which was a very small amount.

Q. What do you mean by the overhaul?

A. Well, in contracts for material for grading and also for hauling material, the contract price is usually stated for a certain distance of haul, which is for half a mile or a mile, and then all distances hauled over that are paid for at a certain rate per thousand feet or per unit per mile or ton.

Q. See if I understand it: If the Company let a contract to build a bridge or to drive the piling in a bridge, the contract would contemplate as normal conditions a certain distance that the piles would have to be hauled from the end of the rails already laid?

A. Well, on new construction it usually has to be hauled from some railway station on some other road in order to get the material on to the ground ahead of the construction.

Q. That is, they usually put in the bridges and trestles before they lay the track along?

A. And before the grading is done, if possible.

Q. So the overhaul is a distance over a certain normal distance stated or agreed upon in the contract?

A. Yes, sir.

The MASTER: A certain length of haul goes under the contract?

WITNESS: Yes, sir.

The MASTER: If it exceeds that amount they pay extra for it?

WITNESS: Yes, sir.

The MASTER: And that is the overhaul?

WITNESS: Yes, sir.

Q. Now, have you stated all of the considerations and prices which have entered into the problem of establishing the reproduction cost of these bridges and trestles?

A. Yes, sir.

Q. Now, what do you say, as applied to the situation with respect to the Minneapolis & St. Louis lines in this state if they were to be now reconstructed, with respect to these unit prices that you have given us; are they, in your opinion, fair and reasonable?

A. Yes, sir.

Q. With respect to the lumber, $29.25 per thousand feet at Minneapolis, the class of lumber is bridge timber, for the most part, I suppose?

A. Yes, sir, mostly Washington fir.

Q. And was $29.25 per thousand the market price at Minneapolis of Washington fir suitable for building of trestles?

A. Yes, sir.

Q. In 1906 and 1907?

A. Yes, sir.

Q. Now, about piling, 28 cents per foot, what is that,—the cost of the pile?

A. Yes, sir.

Q. Where?

A. On the ground, f. o. b. Minneapolis.

Q. That is, free on board of cars at Minneapolis; and was that the market price actually paid for piles suitable for such bridges and trestles at Minneapolis during the period in question?

A. Yes, sir.

Q. Now, framing the timber: That is the carpenter work, so to speak, that is necessary in framing bridges?

A. Yes, sir.

Q. And that was estimated at the cost per thousand feet for framing?

A. Yes, sir.

Q. Is it customary, or does it ever happen, that contracts for framing are separately let, or is that usually included as one of the elements of a contract embracing more items?

A. Well, the contract for framing is usually a stated amount separate from the other prices given for the construction work.

Q. And was $10 per thousand feet the customary and usual and reasonable price for framing such timbers for bridges?

A. Yes, sir.

Q. With respect to the 25 cents per foot for driving piles—

A. Yes, sir.

Q. —that is in addition to the cost of the pile?

A. Yes, sir.

Q. That is what it cost—your estimate of the cost to put the hammer on top of the pile often enough to sink it down in the ground to where you want it?

A. Yes, sir.

Q. Now, with respect to that work, the bridges included in your estimate are strung from one end of the line to the other in the state?

A. Yes, sir.

Q. And are there many piles to be driven at any one bridge, or are there comparatively few at a good many places?

A. Well, comparatively few at a great many places.

Q. Would you be able to state, roughly or accurately, the average number of piles per location per bridge?

A. Well, probably not over fifty.

Q. Now, these piles are customarily driven by a pile-driver?

A. Yes, sir.

Q. That is a heavy machine and one difficult to move, is it not?

A. Yes, sir.

Q. And it would cost more to drive piles at a good many locations, where there are not more than fifty on the average, than it would to drive a like number of piles at fewer locations where you had a good deal of work of pile-driving to do without moving your plant and pile-driver?

A. Yes, sir.

Q. Now, under the circumstances, do you consider that 25 cents per foot for driving of piles for the reconstruction of that road, if it were to be reconstructed now or any time within the last two years, a fair and reasonable price?

A. Yes, sir.

Q. Now, with respect to the overhaul, 17 cents per what—thousand feet?

A. 75 cents per mile per thousand feet.

Q. 75 cents per mile?

A. But the average length of haul is 17 miles.

Q. 75 cents per mile?

A. Per thousand feet.

Q. For an average of 17 miles?

A. For an average of 17 miles.

Q. Does that include all the bridge timber?

A. The timber, not the piling.

Q. That includes the timber but not the piling. And would it be reasonably necessary, in your opinion, to have an average overhaul of that length in the reconstruction of the road?

A. Yes, sir.

Q. And that is hauling by teams from railway stations to the points in question?

A. Yes, sir.

Q. Do you consider that 75 cents per thousand feet of bridge lumber would be a reasonable price for a mile haul?

A. Yes, sir.

Q. How many tons or pounds in a thousand feet of such

timber? It is usually used green, is it?

A. Comparatively so.

Q. Do you know what a thousand feet of that bridge timber would weigh out? I am trying to see what kind of a job it would be to haul it.

A. A thousand feet, board measure, would be approximately two tons.

Q. With respect to item 5 on Ex. 28, cross-ties and switch-ties. Ex. 28 expresses that item at $1,172,229; it was stated on Saturday that the State's claim with respect to that was $971,-641, a difference of $200,588, and I think it was informally agreed, (perhaps formally expressed in the record) that there was substantially no difference between the State and the Company with respect to the number of ties.

Mr. O'BRIEN: You are mistaken about that.

Engineer MORGAN: It was so stated, but since that time I have investigated and find that there is a difference of 41,406 ties in which the Minneapolis & St. Louis' report is in excess of the number of ties that I find on the M. & St. L. road.

Statement produced marked Complainant's Ex. 30–Cutler.

Q. What is Complainant's Ex. 30–Cutler?

A. Ex. 30 is a statement showing by divisions a detailed summary of the report, excepting real estate and equipment.

Q. And subdivides it into divisions?

A. Yes, sir.

Q. What divisions?

A. Into the Minneapolis yard, the Albert Lea division, Western division, Southwestern division, Pacific division and the Southern division.

Q. And as I understand it, it shows with respect to each such division the number of cubic yards and the unit price per cubic yard included—for the grading, for example?

A. Yes, sir.

Q. And the percentage allowed for solidification?

A. Yes, sir.

Q. Being the same matter referred to on Saturday by State's attorneys as $608,896 on the whole road?

A. Yes, sir, except that I believe the State have included some further items than we have in the same solidification.

Q. But that referred to the same subject?

A. Yes, sir.

Q. Now, "protection of roadbed" and the unit price,—what is meant by that?

A. That corresponds to item 3 on Ex. 28.

Q. The form prescribed by the State?

A. Yes, sir.

Q. And the cross-ties corresponds to No. 5, the form prescribed by the State?

A. Yes, sir.

Q. There being no tunnels on this road?

A. No, sir.

Q. And Ex. 30 shows the kind of ties and the price of each?

A. Yes, sir.

Q. Whether it be oak or cedar, a cross-tie or a switch-tie?

A. Yes, sir.

Q. I observe bumping-posts "58 at $35," in the Minneapolis division, on Ex. 30. Under what item in the State's form would that be included?

A. It is not called for on the State's form, but I believe it is included along with the cross-ties in item 5.

The MASTER: I see it says here "Switch-ties, 191 sets" at so much. What does that mean?

Q. What do you mean by a set of ties? The one item reads "Switch-ties, 191 sets at $96.79."

A. A set means the whole number of ties used in one switch, one turn-off from another track.

Q. And how many ties usually in—

A. Well, it will vary with the number and kind of switch, from 30 to 50 or 60.

Q. The ballast referred to on Ex. 30 corresponds to item 6 on Ex. 28, the form prescribed by the State?

A. Yes, sir.

Q. And it is subdivided into miles of ballast, I notice, in the Minneapolis division, between gravel, 12.24 miles, and one mile of cinders—

A. Yes, sir.

Q. And so on through the Ex. 30, it is a summation of the items as to each division and as required by the form prescribed by the State, which is Ex. 27 here?

A. Yes, sir.

Q. Now, how did you get at the number of ties on the road? Did you do that work yourself?

A. Yes, sir.

Q. And how did you get at it?

A. It was gotten at by determining the number per mile of track, both sidetrack and main line.

Q. That would be for the cross-ties?

A. Yes, sir.

Q. How did you get at the number of switch-ties?

A. Well, that would be determined by knowing the number and kind of switches.

Q. And the kind of ties, whether oak or cedar, how was that arrived at?

A. The standard track-laying methods on the different divisions determines the number of the different kinds of ties used.

Q. That is, as divided as between cedar and other kinds, the kind of wood in the ties?

A. Yes, sir. Some divisions require hard-wood ties at certain places and soft-wood at the others.

Q. Then, as I understand it, that road had a standard with respect to the number of cross-ties per mile—

A. Yes, sir.

Q. —and also with respect to the number of kinds of ties?

A. Yes, sir.

Q. As to whether oak or cedar. And is that standard uniform on all divisions or does it vary?

A. It varies with the divisions.

Q. And this exhibit expresses the number of ties of each kind as it purports to upon the railroad, following the standard which was in vogue at the time you made the report?

A. Yes, sir.

Q. And you yourself made the computations on the basis of the standard, and applied the prices indicated on the exhibit?

A. Yes, sir.

Q. With respect to the prices allowed for ties, was your Company, during 1906 and 1907, a purchaser of ties of these various kinds?

A. Yes, sir.

Q. And with respect to the prices allowed, do you know whether they were the current and market prices, such as your Company was paying at that time, or whether the prices incorporated here are under or over the current prices and the prices paid by your Company?

A. These prices are the current prices for 1907 for future delivery.

Q. They were the prices current for 1907 for future delivery?

A. Yes, sir.

Q. At what point?

A. At Minneapolis.

Q. Was there anything included in the item of ties for transportation of the same to various points on the road where they would be needed in case of reproduction; that is, from Minneapolis to those points?

A. No, sir.

Mr. BUTLER: Ex. 30 is offered in evidence.

The MASTER: Is it supplementary to Ex. 28, or a modification?

Mr. BUTLER: Well, Ex. 28 covers the whole business. Now, you will observe that in Ex. 28 nothing is expressed but dollars; neither the acreage of lands nor the price per acre, nor the number of ties nor the amount of ties, nor price per tie. Now, Ex. 30 purposes to do this: It takes the road by divisions and deals with all of the elements on Ex. 28 except the land values and equipment, or I think it would be accurately expressed by saying all items from 2 to 29 inclusive.

WITNESS: Yes, sir.

Mr. BUTLER: And shows the number of units of each thing and the price per unit, and separates it as to the divisions of the road.

Mr. O'BRIEN: Well, it constitutes the details and the bases upon which Ex. 28 was prepared, with the exception of the items you have mentioned, doesn't it?

Mr. BUTLER: Yes; that is, grouped together.

Mr. O'BRIEN: Well, the grouping is different, but the unit prices and the details are given in each estimate?

Mr. BUTLER: Yes; it takes these sheets and groups them and adds to them the unit prices.

Q. But they don't carry on the sheet, do they, the prices?

A. Not all of them.

Mr. O'Brien: The grouping of the items doesn't interfere at all with the other statement; it constitutes the details and bases for making up Ex. 28 with the exception of the land values and equipment?

Mr. BUTLER: No.

Mr. O'BRIEN: Then, having done that, furnished the details, you have grouped them in another form?

Mr. BUTLER: Yes, and my idea was that it would furnish to you and to us means of checking with Mr. Morgan's state-

ment as to the quantities and as to prices.

Mr. O'BRIEN: But these details can be just as well applied to the entire road as they could to divisions; they will apply equally well to ties, for instance, over the entire road as they would to ties on any one division?

Mr. BUTLER: I am not sure whether the same prices follow on all.

WITNESS: Well, not quite the same prices on some things, on account of different conditions; for instance, grading.

Mr. O'BRIEN: Well, if you take the total number of oak ties and total number of cedar ties on the entire road and multiply them by the respective prices which you have given for ties, you would get the value of all the ties in the entire road?

WITNESS: Yes, sir; that applies to ties, it doesn't apply to grading; I don't know that there is any other thing that it does not apply to, I don't think there is. It does not apply to grading—the unit prices.

Mr. O'BRIEN: Well, is there any grading at the same price in different divisions?

WITNESS: No, sir; I think in every case that we gave each division a unit price by itself for the entire division.

Mr. O'BRIEN: However, the principle I have stated would hold good just the same, would it not?

WITNESS: Yes, sir.

Mr. O'BRIEN: That on the entire road you would have so many miles of grading at a certain price?

WITNESS: At an average price.

Mr. O'BRIEN: No, you would have so many miles of grading on the entire road at a certain price; now, whether that was in one division or two divisions wouldn't make any difference?

WITNESS: No, sir, that is true.

Mr. O'BRIEN: And the grouping of the divisions is merely an additional subdivision of these matters?

WITNESS: It is a division required by the original forms which were sent us.

The MASTER: Ex. 28 is measurably a summary of Ex. 30?

WITNESS: Yes, sir, it is that.

Mr. BUTLER: That is it.

Mr. O'BRIEN: Yes, that is it; with the additional items put in?

WITNESS: Yes, sir.

Mr. O'BRIEN: Real estate and equipment?

Mr. BUTLER: Yes. And your Honor will recall that I intended by Ex. 29 to do the same thing with respect to the land. Now, we understand that there is no difference between the State and our figures as to the right-of-way or lands, excepting alone in the city of Minneapolis, and that leaves, for examination, the first sheet of Ex. 29, concerning which we made admissions this morning as to acreage.

Mr. O'BRIEN: I don't know whether the record shows our position with regard to the value of lands.

Mr. BUTLER: It does.

The MASTER: I think that was discussed here Saturday, Mr. O'Brien.

Mr. BUTLER: My understanding is this: that we claim a certain market value per acre by divisions throughout the country, and we claim a factor usually of three. In the aggregate, Mr. Durment's position was that the market value admitted by the State was the same as the market value claimed by the Company, that the position of the counsel for the State is this: that we are not entitled to add anything to the market value of the right-of-way, there should be no factor taken, but that if any factor should be taken it should be the one which we took in the country as to all of the divisions of the road except in the city of Minneapolis. My understanding was that the counsel on the other side have reserved the right to contend that no factor should be used, but if it be determined that a factor is to be used then the one we used in the country agrees with theirs.

The MASTER: Which was three?

Mr. BUTLER: Yes.

Mr. O'BRIEN: In the cities (terminals) we neither agree as to the propriety of increasing the market value nor as to the amount that market value should be increased if it is to be increased.

The MASTER: I understand that is a matter for evidence, as to the city terminals.

Mr. O'BRIEN: Yes.

Mr. BUTLER: Yes; I understand that, except insofar as we have indicated positions as to the area in Minneapolis, the whole subject is open, both as to the market value and right-of-way factor.

Mr. O'BRIEN: Since the adjournment yesterday I have communicated with Mr. Durment, who has had particular charge of the branch of the case showing the valuation, and he informs me that he understood the stipulations with reference to value as I stated that I understood them yesterday, that the agreements were final; and while I have gone on and assisted in preparing this statement and hope that we will still be able practically to come to an agreement on these items, I would like to have the record show that because of the misunderstanding between the parties, all of those agreements as to values are withdrawn and that either party is at liberty to prove such value as he sees fit.

The MASTER: The Master understands that is the situation.

Mr. BUTLER: I understood that certain concessions were made by Mr. Durment as of June 30, 1906. Now, that seems to have been a misunderstanding.

The MASTER: That is the way I understand it.

Mr. BUTLER: It doesn't make any difference whether I was at fault or not, they ought not to be bound by any admission or stipulation that they did not intend to make and I don't want any such claim, but with respect to a number of the admissions

which were made, it seems to me, from what I have examined, that the Company may be willing to accept the admission as it was intended and as it has been explained since it was made.

Mr. O'BRIEN: I have no doubt that that is true and that after a little more work we shall be able to arrive at just what the understanding is.

Mr. BUTLER: Yes, but I did not want it to appear that all admissions were withdrawn; I don't think that would be right; I think we would have a right to accept the admissions that were made in the manner that the counsel understood they were made and as they have been explained since upon the record. I think that there are perhaps some items here where, in order to save the difficulty and embarrassment of getting competent proof, we would be willing to have the Master construe the admission as the Master says he understood it and as counsel say they intended it.

The MASTER: Well, I don't know that there is any objection to any admission made on the theory that you understood it to have been made, to-wit, for all the purposes of this case, and where they are willing to accept such an admission as that are you willing to allow that admission to stand?

Mr. O'BRIEN: I am inclined to think that that is true, but it would be an unfortunate thing if we do not understand each other now at this time and know just where we stood in the matter. As I understand it, the effort to reach an agreement on a large number of these items has been by no means abandoned, but that, pending our conclusion, neither party is bound by the admissions which were made under a misunderstanding.

Mr. BUTLER: Let me straighten that all out. If now, or at any time before the testimony closes, any admission with respect to this subject is called to our attention by the other side and it is asserted that it was made inadvertently and that it should not stand—even construed as they say it ought to be construed, as the Master understood it—that admission may

be withdrawn and leave us in the same fix, and let that apply to us also.

which he made when they are read and construed in the light

Mr. O'BRIEN: Well, I think it ought to be broader than that; I think it ought to be that the question of admitting values by either party is entirely open.

The MASTER: Doesn't that leave it open?

Mr. O'BRIEN: I don't know that it does, because it says some admissions may be and some not. We have no intention of receding from the conclusions we have arrived at with regard to valuations and they are stated on this "working table" that is furnished here, but in many instances there was a higher price agreed upon, as a matter of compromise. Now, Mr. Durment has a right to instruct me in that matter and he instructs me that he desires all of those concessions withdrawn because he did not understand the situation.

Mr. BUTLER: Does he want withdrawn those concessions of the explanations, and construed just as he intended to have made them? That is the point. It does not seem to me that that is necessary and I hope it will not be done.

Mr. O'BRIEN: I hope it will not be, but I think he ought to have that right, and before your case closes you ought to be informed as to where there is a difference and where there will be a dispute.

Mr. BUTLER: I intended by my statement a few moments ago, when I said that if at any time before the close of the case it is indicated that any of these figures that were agreed upon or have been agreed upon were agreed upon by inadvertence, that they be withdrawn and that we start over again; but I hope it will not be necessary to strike out everything we have done now and begin to admit over again.

Recess until 2 P. M.

AFTERNOON SESSION.

Mr. BUTLER: In the record of Mr. Tittemore's testimony given on Tuesday, October 6th, we desire to suggest certain corrections. On page 886 (transcript) we change 2.8 cents to 3 cents where it appears after the words, "On coarse grain *via* Minnesota Transfer it ranges from 2.8 cents at Manchester to 6.6 cents at Sherburne higher than the statute rate"—2.8 cents to be changed to 3 cents.

On the same page and in the third line from the bottom of the page "1.1 cents" to .1 of a cent where the same appears in this connection, to-wit "Albert Lea the statute allowance is 1.1 cents greater," we ask that it be made to read .1 of a cent greater.

And in the next line below the one last referred to, strike out after the words "and at Manchester 4.1 cents" and insert in lieu thereof the following words, to-wit, "*via* Minnesota Transfer .4 of a cent."

Mr. O'BRIEN: I understand this is Mr. Tittemore's suggestion?

Mr. TITTEMORE: Oh, yes. I think probably it was as much the stenographer as myself, because I was reading some of it from correct manuscript and this does not agree with that.

Mr. BUTLER: It is either a slip of the tongue or a mistake in catching the sound, and I think when we come to examine it—

Mr. TITTEMORE: The sense of the reading will indicate it.

Mr. BUTLER: On the second line from the top of page 887, after the words "*via* Albert Lea by from" strike out "1.1 cents" and insert in lieu thereof .1 of a cent; and in the fourth line from the top of the page after the words "Minnesota Transfer from" strike out "5.1 cents" and insert in lieu thereof .5 of a cent; in the same line strike out the word "Montgomery" and insert in lieu thereof the word Waseca. Below the middle of the page strike out "412" and insert in lieu thereof 414, making

the expression read "and 414 miles *via* Albert Lea" instead of "412 miles *via* Albert Lea."

In the record of Thursday, October 8th, we want to amend the transcript on page 901 thereof by striking out "6.2 mills" and inserting in lieu thereof "6.7 mills," making the expression read "under the statute basis compared with a range of from 6.7 mills at Manchester" instead of 6.2 mills at Manchester.

On page 906 strike out "6.8 mills" and insert in lieu thereof "16.8 mills" making the expression read "at Madison to 16.8 mills at Arlington" instead of "6.8."

On page 907 insert after the words "except at Arlington" the following words, to-wit, "and New Ulm."

On page 908, on the third line from the top, strike out "2" and insert "3" making the expression read "statute basis 3 cents" instead of "2 cents."

On the fourth line from the top of the same page, strike out "6" and insert "7," making the expression read "statute basis 7 cents" instead of "6 cents."

On the tenth line from the top of the same page strike out "8 mills" and insert in lieu thereof ".8 of a mill;" and in the next line below strike out the word "two" and insert in lieu thereof the word "four"; and in the same line strike out the word ".9" and insert in lieu thereof ".3", making the expression read as follows: "through rate while the statute basis would range from .8 of a mill to 4.3 mills."

On the bottom line of the same page (908) strike out the words "Minnesota Transfer" and insert in lieu thereof "Albert Lea or Storm Lake."

On page 909, in the fifth line from the top, strike out the words "Minnesota Transfer" and insert the words "Albert Lea or Storm Lake."

On page 910, on the bottom line but one, strike out the expression "9 mills" and insert in lieu thereof ".9 of a mill."

On page 911, on the eighth line from the bottom, strike out

"$1.42 per ton," and insert in lieu thereof "$1.05 per ton."

On page 912, strike out "$1.90 per ton" and insert "$1.88 per ton," making the expression read "statute basis $1.88 per ton." That is the fifth line from the bottom of page 912.

On page 930, in the fourth line from the top of the page, strike out "16.12 cents" and insert in lieu thereof "16.51 cents"; and in the same line strike out "$3.22" and insert in lieu thereof "$3.30." In the fifth line from the top of the same page strike out "5.6 mills" and insert "5.7 mills." In the second line from the bottom of the page strike out "59.01 mills" and insert in lieu thereof "59.1 mills."

And in the record of the twenty-first day's session, October 9th, on page 975, the sixth line from the bottom, strike out "1½ cents" and insert in lieu thereof "1.1 cents."

On page 976, ninth line from the top, strike out "16½ cents" and insert "17 cents"; and in the tenth line from the top of that page strike out "16½ cents" and insert "16.7 cents."

JAMES N. TITTEMORE,
recalled on behalf of Complainant, testified.

By Mr. BUTLER:

Q. Mr. Tittemore, at the time we paused in your re-direct examination, you had already testified with respect to soft coal, hard coal, wheat and flour and also coarse grain, with regard to the effect of the enforcement of the schedule prescribed in Chapter 232 as to interstate business, upon the interstate commerce moved by your Company and the interstate rates; I now desire to ask you a question or two with respect to lumber and interstate movement thereof and rates thereon. In cross-examination, my recollection is you testified that the rate from the Twin Cities to Chicago for lumber was 10 cents per hundred weight; is that the fact?

A. Yes, sir.

Q. And has that rate been in for a considerable period of time?

A. Yes, for a long period of time; I can't say exactly when it was put in.

Q. What is the controlling consideration in making and maintaining that low rate to Chicago?

A. Insofar as we are concerned, so far as our influence (that is, the influence of the M. & St. L. road) entered into it, we did not feel as though we could maintain a higher rate from Minneapolis to Chicago on lumber than was in force from Ashland, Wisconsin, or Duluth to Chicago on lumber. We made the Duluth rate the maximum at Minneapolis because, so far as we are concerned, we hauled the Duluth business through Minneapolis; some of the other lines I presume were situated likewise and did the same thing. Then again, the rates on lumber from the Marinette and Menomonie district to Chicago and then from the Rhinelander group in Wisconsin affected the rate at Minneapolis. Years ago the whole question was left to a Mr. Bogue, of Chicago, to make an award, and that award on lumber rates was in effect for a great number of years and still is in partial effect, and the Minneapolis rate has always had a relation to all of those rates. But the 10-cent figure, so far as we are concerned, is largely controlled by the rate from Ashland and Duluth, which is 10 cents per hundred pounds, all rail, to Chicago.

Q. And Duluth and Ashland are more distant from Chicago than the Twin Cities by about 150 miles, speaking roughly?

A. Yes, sir; and the rate from Rhinelander, Wisconsin, to Chicago, or the Rhinelander group, if you will, and from the Warsaw group in Wisconsin, is less than the Minneapolis rate for about the same mileage; so that, taking everything into consideration, the 10-cent rate appeared to be about as high a rate as we could secure.

Q. Now, Ex. 14, 14–A and Ex. 15 indicate a claim with respect to lumber, the enforcement of the schedule in Chapter 232 as to local business would necessarily result in loss upon your interstate rates applied to lumber. Will you explain to us how that would be brought about as a necessary result of the enforcement of the statute in question?

A. I remember distinctly as to the intrastate, but I am not positive of the exact items in the interstate.

Q. On Ex. 14 the loss was computed at $1,231 on the interstate business; do you remember what particular territory would be affected so as to produce that loss?

A. Well, I do. For instance, if Duluth would be reduced, Ashland and points in Wisconsin in that group would be reduced.

Q. That is to say, would a reduction on the lumber rates from Duluth *via* a Minnesota intrastate road to points in Minnesota require a readjustment of certain of the interstate rates?

A. It would.

Q. Now where, can you tell us?

A. The Ashland group.

Q. Ashland to where?

A. Ashland, Wisconsin, to any point in Minnesota on our road *via* Minnesota Transfer.

Q. That is, a Duluth rate *via* the Milwaukee, as a continuous line, or *via* the Northwestern and a connection into your territory, would require an equalization of the Ashland rate *via* the Wisconsin Central to the Minnesota Transfer or any other road to the Minnesota Transfer and your road into your own territory?

A. Yes, sir.

Q. And is it by reason of that adjustment this loss has been computed?

A. Yes, sir.

Q. With respect to the interstate rates upon cattle, will

you explain to the Master what effect upon interstate rates the enforcement of the statute would have?

A. The statute would make the rate on cattle from Sherburne to Minneapolis 13.7 cents as against the old rate of 16 cents, a reduction of 2.3 cents per hundred pounds. Applying that reduction to interstate business as we would and always have, we would reduce the rates at Dunnell from 24½ cents to 22.2 cents. We figured 22 cents because that is the figure that we would have published. At Huntington, Iowa, to Chicago, the rate would be 24½ cents on cattle. We haul Sherburne business and Dunnell business through Huntington, Iowa. At Estherville, a junction with the Rock Island road, where the rate is 24½ cents to Chicago on cattle, we would make a 22-cent rate. Then at Spencer, Iowa, where we turn our cattle business over to the Milwaukee, we encounter a 23½-cent rate on cattle from Spencer to Chicago; we would reduce that to 22 cents. At Greenville, another junction with the Rock Island road, we would reduce from 23½ cents to 22 cents. At Sioux Rapids, Iowa, our junction with the Northwestern road, and where we turn off a majority of our live stock business from the Southwestern division, we would reduce from 23½ cents to 22 cents. At Ruthven, a junction with the Milwaukee road, we would reduce from 23½ to 22 cents per hundred pounds. At Storm Lake, a junction with the Illinois Central road, and *via* which junction we turn off a considerable amount of stock business from our Southwestern division, we would reduce from 23½ to 22 cents per hundred weight. At Tara, another junction with the Illinois Central, but not a junction through which we deliver freight, we would reduce from 23½ to 22 cents. At Moorland, Iowa, a junction with the Great Western road, we would reduce from 23½ to 22 cents. And in saying we would reduce, I gave such an order and had the tariffs printed, putting in the rates that I am now talking about, which would have compelled the other roads to have met the rates. At Gow-

rie, another junction with the Rock Island road, just north of Des Moines, we would reduce from 23½ to 22 cents; at Grand Junction, another point just north of Des Moines, on the Northwestern road and a junction through which we deliver the Northwestern cattle business, we would reduce from 23½ to 22 cents. At Perry, Iowa, a point through which we deliver cattle business to the Milwaukee road, we would reduce from 23 to 22 cents. Then, by the operation of our reductions on our Des Moines and Fort Dodge line and our Southwestern division, both divisions lying north and south, the other roads meeting our rates, we, in conjunction with the Iowa Central road at certain points, would reduce the rates from Northwood, Iowa, from 23½ cents to 22 cents; Kensett, Iowa, 23½ to 22; Manley, Iowa, from 23½ to 22. And these points, (Northwood, Iowa, Kensett, Iowa, and Manley, Iowa,) are junction-points with the Rock Island and the Great Western roads. At Mason City, Iowa, we would reduce from 23½ to 22 cents; at Sheffield, Iowa, from 23 cents to 22 cents; at Chapin, Iowa, from 23 to 22 cents; at Hampton, Iowa, a junction with the Great Western road, from 23 cents to 22 cents; Geneva, Iowa, from 23 to 22 cents per hundred pounds; Faulkner, Iowa, from 22½ cents to 22 cents per hundred pounds. It would practically reduce the rates from thirteen counties in Iowa to Chicago from 23½ cents to 22 cents per hundred pounds. And in figuring this I have confined the loss to the direct result of my own action as traffic manager of the M. & St. L. road and have not figured what the other roads would reduce farther west of us, but there would be a considerable reduction.

Q. Which would increase the loss on the interstate rates on your road, the further reduction that you have now referred to?

A. It might, Mr. Butler, yes.

Q. Now, the primary market for cattle, hogs and sheep in Minnesota reached by Minnesota intrastate, hauled from points

on your line, is at South St. Paul?

A. Yes, sir.

Q. And out here at New Brighton, is there a market out there?

A. Well, South St. Paul for us principally.

Q. That is the only primary market reached by your road in Minnesota?

A. Yes, sir.

Q. And is it the only primary market in Minnesota?

A. I should say so.

Q. For livestock.

A. I said the rates were computed on Minneapolis, if you will notice; and that is because we are compelled to use the Minneapolis distance because nearly all of the other roads approach South St. Paul first and we approach it last; that is, we go through Minneapolis to South St. Paul, while they come to Minneapolis through South St. Paul. We go to South St. Paul through Minneapolis, and they come to Minneapolis through South St. Paul.

Q. As for instance, the Great Western and Rock Island coming from your territory in southern Minnesota come to South St. Paul first?

A. That is it.

Q. And the rate is made on their mileage to that point?

A. Yes, sir.

Q. And you come to Minneapolis first and have to meet the rate made on the short-line mileage?

A. Yes.

Q. Where is the stock market outside of Minnesota that competes in this same territory for livestock, this Minnesota territory served by your Company?

A. Well, to a certain extent Sioux City, Iowa competes; Chicago, of course, is the principal market.

Q. Chicago is the strong competitor?

A. It is the competitor when it comes to the fat cattle, but for stock cattle or feeding cattle Sioux City oftentimes has the "first crack" at them, as the boys say. They go there, and then they are shipped on to Chicago; they may be sold, for instance, at Sioux City, to be fed in Iowa, or they may go on to Chicago and be sold to be fed in Illinois or Missouri; and that rate figures somewhat by holding the 16-cent rate in effect from Huntington, Iowa, for instance, to South St. Paul, and reducing the rate from Dunnell to South St. Paul leaves a different relation as between the rates from Huntington to Sioux City and the rates from Dunnell and Huntington to South St. Paul just as previously existed.

Q. That is, a disturbance of the rate for the movement wholly in Minnesota would put the Minnesota market at an advantage in the competition unless there was a corresponding reduction made to interstate points?

A. The man at Huntington, Iowa, would be at a disadvantage—a considerable disadvantage, considering the old adjustment.

Q. That is, substantially analogous conditions with respect to cattle, hogs and sheep exist as that which you have heretofore explained with reference to wheat, flour and coarse grain, as to the adjustment between markets?

A. Yes, except there is a little more independence can be exerted upon the part of the Railroad Company in the case of cattle than in the case of wheat and flour, where we really have a contract that a certain relation of rates shall exist.

Q. Now, with respect to the effect of the enforcement of the Minnesota statute upon interstate rates moving flax and millet seed in interstate commerce, can you explain to the Master the reasons for making an adjustment of the interstate rates to correspond with the change required by the statute?

A. They are practically the same as in the case of other grains, but I haven't an example with me as to flax and millet seed.

Q. But the reasons that you have given with respect to coarse grain and with respect to wheat are in analogy with the situation with respect to flax and millet seed?

A. And millet, generally speaking, yes sir.

Q. When you testified on this subject a few days ago, you spoke of checking in the interstate rates with these local rates. Had tariffs, in obedience to the requirements of the statute, been prepared before your Company was enjoined in this suit from applying those rates?

A. Our tariffs had been prepared and distributed, and were actually in the hands of the agents with instructions to use them.

Q. That was about the 1st day of June, 1907—

A. I believe so.

Q. —that the act took effect.

A. Yes, that the act took effect.

Q. And you were enjoined the day before or that day, about that time, at any rate?

A. I think it was the day before.

Q. Now, in preparing to obey the statute, did your Company make the changes which you then deemed would be necessary to make in the interstate rates affecting these commodities?

Mr. O'BRIEN: That is objected to as immaterial.

A. Yes, sir; I sent a man to Chicago to check the rates in, and gave him instructions to check them in, exactly as I have testified in this case.

Q. You have a number of times in your testimony, in cross-examination and in redirect-examination, referred to this meeting of rate men at Chicago to "check in," as you call it, the interstate rates; I think that subject has not been explained fully to the Master, and I wish you would explain just what and how that work is done. I don't intend to call for the details of the figures but I do want to have an understanding of just what

was done and who took part in it and all about it.

A. Well, after the statute was enacted and the traffic men were positive as to the exact rates that would be applied to traffic in Minnesota, there were several meetings of officers of my rank in the profession, if you will, to determine not only the extent of the influence of the statute rate upon Minnesota traffic, but more particularly its influence upon interstate traffic, and we came to general conclusions.

Q. What roads were represented?

Mr. O'BRIEN: I suppose all of this is taken under this objection?

Mr. BUTLER: Yes, it may be so considered.

Mr. O'BRIEN: We object to all this as incompetent and immaterial.

Mr. BUTLER: That may be considered without the necessity of repeating the objection.

A. All of the roads doing business in Minnesota were represented. We then (that is, the heads of the traffic departments) ordered a rate checked. In other words, your chief rate-clerks go to Chicago—in this case they went to Chicago because so many of the roads, and a majority of the roads, are in Chicago that are interested in Minnesota traffic—went to Chicago and checked in the interstate rates at junction-points, and in the case of wheat and flour my man was instructed to check in the rates on wheat and flour, for instance, on exactly the basis that I had agreed to maintain an industry; that is, the relation of the Minneapolis rate to the Chicago rate. Other roads did the same thing; and the check-out resulted in the rates about as I have testified to. The check-out resulted exactly on our road to the rates that I have testified to, because I gave orders to that effect; but the change in the statute rate involved so many interstate rates that it was impossible for our printers to get the interstate tariffs out as quickly as they did the state tariffs, the result being that several of the roads (two

of the roads) had indicated that they would be obliged to make certain rates on certain commodities from some of our junctions that would be less than those I had ordered and checked in, and which were actually checked in and which have been referred to in this testimony; the object of the rate clerks being to have rates uniform from junctions to prevent discriminations at the junctions and as between local points and junction-points, because if our rate-clerk was to put in a rate of 22 cents on cattle from Dunnell to Chicago we might at once come in competition with a road that was more desirous of taking that business first to Sioux City and thence to Chicago. We could not check in our rate until after we had conferred with the other road and determined upon what was a fair rate for both; and that rate is checked in and agreed to and goes into a record, and that is distributed and that is the rate used in a rate-check.

Q. So this work of checking the interstate rates, by reason of the application or anticipated application of the rates prescribed in the Minnesota statute to the local business, was in fact completed before the injunction in this case?

A. So far as we were concerned and the other roads that I know about.

Q. And it was upon these rates, was it, that these losses have been computed which are evidenced by Exhibits 14, 14-A and 15?

A. Yes, sir.

Q. Now, has it been the practice of railroad companies, in case of a change of rate, whether local or interstate, to check in corresponding rates made necessary by the change?

A. I have never known, in fifteen years—and I have been intimately connected with Iowa and Minnesota traffic for that length of time—where any rate could be changed from a point within a state or any other state to a primary market without bringing a rate-check and a general readjustment.

Q. And there has uniformly been such rate-check and readjustment?

A. Yes, sir.

Q. That is, upon the change of a local rate in Minnesota to a primary market, has that always been attended, in your experience, during this period, with an interstate readjustment which you call the "checking in of the rates" as you have described?

A. I don't think it ever fails, in a single case, to bring about a readjustment.

Mr. BUTLER: Complainant's Ex. 15-A-Tittemore is offered in evidence, together with the note of explanation comparing it with Ex. 15 attached to it. Somewhat the same situation with respect to the comparison between 15-A and 15 exists as heretofore explained between Exhibits 14-A and 14. Your Honor will remember that Exhibits 14 and 14-A cover these commodities for a year; 15 and 15-A refer to them for the month of September, 1907, and, the year later, to the period covered by 14 and 14-A. The modification of figures explained in the note arises from the reasons there stated, the principal one being the including in the original exhibit earnings certain shipments billed to milling stations to be converted into milled product and forwarded to points without the state which was on the original Exhibit 15-A regarded as Minnesota local business whereas it was an interstate business moving in transit. That item amounted to a decrease in the earnings of $2,136.11, and I think the others, being small items are sufficiently explained. The varied details of these items appearing in the analysis of the business which has been made—and abstracts of which were here before your Honor for examination by the other side—are still preserved and can be examined and checked.

Q. In your direct examination, Mr. Tittemore, I asked you something about the comparative cost of doing the Minnesota local intrastate business covered by the order of the Commission and the statute here in question as compared with the cost of doing the interstate business of your Company; in addition

to those that you have heretofore referred to, are there any peculiar or exceptional conditions bearing upon the relative cost of doing the two classes of business?

A. Well, the M. & St. L. road in itself is a road that you would call a distinctively local road. I will try and make it plain what I mean. I think I can make it plain on this map probably, (large Minnesota map.) I consider that there is one division of the M. & St. L. road that really handles through business, and that is from Minneapolis to Albert Lea. You take the road from Minneapolis out west and on out to the Missouri river, and there is some through business, but not through traffic as a traffic man or railroad man understands it. For instance, a shipment of cattle from Le Beau, South Dakota, on the Missouri river, to South St. Paul would be a through shipment on our road so far as intermediate divisions of the road are concerned, but is local traffic to the road; in other words, there is no through traffic from any other line coming on to our railroad between Minneapolis and Le Beau in any quantities whatever that would be worth calling through business.

The MASTER: Does through business mean interline business with you?

WITNESS: Interline business is through business, your Honor, yes, but through business might be business that would be taken on rates that were not through rates, like proportional rates, if you will, but usually handled on interline billing. Interline billing is an accountant's definition and not used by traffic men.

The MASTER: It has been used in the testimony here.

WITNESS: By Mr. Scott, I presume, and the counsel, but I think not by me.

The MASTER: I assumed that it was connecting with some other line, generally speaking.

WITNESS: It is; it relates to the interline statement that

determines the proportions of the money that shall be given to each road; that is called the interline account and used by the auditor usually and might not always be through traffic. It might be interline between two local points on two different roads in Minnesota within twenty miles of each other and that would not be through traffic.

The MASTER: I didn't understand it was necessarily interstate traffic.

WITNESS: No, nor through traffic, either.

The MASTER: Nor through traffic either?

WITNESS: No.

The MASTER: Well, through traffic might be intrastate traffic?

WITNESS: Not on our road; I wouldn't consider it so, no. Now, take wheat; from the time the harvest begins and the elevators begin to fill up, we have a considerable amount of wheat business west of Watertown and it will assemble in trainloads at Conde or at Watertown and we will put an engine on that and haul it through to Minneapolis. That is not a schedule train, but it is a through train carrying freight from remote points on our road to Minneapolis, but that is confined to four months in the year. After that has moved we have no traffic whatever on the line from Minneapolis to Le Beau that can be called through traffic, and all of our trains are run with relation to the local business on the division. When I came with the road we had, on some of the divisions west here, (I think it was the Pacific) a service of a freight train out west one day and back east the next day. I didn't like that, and recommended that a local service be put on every day each way but Sunday, because the local business should be a first consideration and should be taken care of by a railroad company. Now, the trains that I ordered on there might just as well have done twice what they did do and could have taken care of this business from west of Watertown without any great additional

expense. That condition is peculiar to our road, and I presume more so than any other road in the country. I don't know of any road exactly like it in this section of the country particularly. When you come to Albert Lea, we have a local train each way every day but Sunday to take care of the local business, and then we have two trains that take care of through business; and when I speak of through business I mean business that goes to foreign lines at Albert Lea, to the Illinois Central or to the Iowa Central. I don't consider it through business to Des Moines on our line, although it is two hundred miles beyond; although it may be through to that division, I wouldn't call it through business.

The MASTER: From Minneapolis to Des Moines?

WITNESS: I wouldn't call it through business between Minneapolis and Albert Lea, although it is put in a through train. Our trains are primarily run to handle business from connecting roads.

Q. That is, on the Albert Lea division?

A. On the Albert Lea division, handle business to and from the connections there, the Illinois Central and the Iowa Central, and formerly, for a great many years, the Rock Island road, before it built into Minneapolis. We found that the through business coming from those roads, (and through business to them meant not business from Cedar Rapids nor Des Moines, but from Chicago and from New York). For instance, we have a car of through business that is assembled by the Lackawanna road at New York; the merchandise is put into that car and sealed there; it comes through on a fast train to Chicago, and is there delivered to the Illinois Central, and the employes of the Illinois Central and the Lackawanna or its representatives at Chicago watch that car as closely as you would watch a sleeping-car full of people going to some place in the Northwest. It is turned over to the Illinois Central, and it comes to us at Albert Lea, and that is through traffic;

and we have our schedule for through traffic fixed with relation to that. Now, it isn't one car from New York, but we have several cars; we have several merchandise cars from Chicago both *via* the Illinois Central and out *via* the Iowa Central, and from Peoria *via* the Iowa Central, all assembling at Albert Lea for our through train to Minneapolis, and we aim to haul that stuff from Albert Lea to Minneapolis without any intermediate stops. That is through traffic as I define it. Now, I studied up that through-and-local-traffic question quite a considerable. I examined the train-sheets myself, (and I know how to do it because fifteen years of my life was spent at it before I went into traffic work) and I found this, and I believe this to be a conservative statement of the facts: It costs the M. & St. L. company 70 per cent more to handle a local train, strictly local train, between Minneapolis and Albert Lea than it does a through train. For a considerable period of time (I don't remember just how long, but I think it would prove up for six months and perhaps longer) it took the local trains thirteen and one-half hours to travel between Minneapolis and Albert Lea, as against six hours and fifty-six minutes for the through trains between Minneapolis and Albert Lea. The average number of stops between Minneapolis and Albert Lea was fourteen for the local trains; the number of stops for the through trains was five; and while I testified in my direct examination that we did do a little local business on through trains, I found out that our transportation department (by my consulting the sheets) had avoided that in every case but one, and that the stops by the through trains were to pull fire, to take water or for some railroad crossing, or some other reason that they couldn't help, as in an emergency and they had to meet it. It takes 100 per cent more coal to run our local trains than it does our through trains; the water expense is nearly a hundred per cent more, if you divide it upon the basis of trains; the pay is considerably more. I found that we had actually

paid, for running local trains (that is, we had actually paid labor in running local trains from Minneapolis to Albert Lea) $29.64 as against $16.42 for a through train the same day.

Q. Is the scale of wages the same and the difference in the amount of wages arising from difference in time consumed, or is there a difference in the scale also?

A. There is a difference in the scale. We pay the men on the local trains more money per hour or per mile than we do on the through trains, and then, besides, there is an extra brakeman on the local train. I found that the switching at the stations could hardly be expressed in a percentage, it is so much more, and that where smaller engines are used the wear and tear to the track and the switches within station limits, while it is more than any class of engine on a through train, still, where we use heavy machines the wear and tear is not only much greater to the track and the switches, but particularly to the machine itself. Then I found that in the very train that you pay $29.64 for wages as against $16.42 for wages in the through train, the through train would contain cars loaded fifty per cent heavier and the train itself would contain tonnage in about the same proportion through. Your through cars are loaded heavier and your train is loaded heavier; it hauls a great many more cars, and the unit of your prosperity on a railroad and of your "net" is entirely determined by the factor of the heavy loading of cars and the maximum tonnage in your trains. That always gives the result, either as a deficit or as a profit.

By Mr. O'BRIEN:

Q. Do you mean, Mr. Tittemore, that if two trains left Minneapolis destined for Albert Lea upon the same day, one train being a through train, as you have described it, let us say loaded with wheat or flour, destined for Chicago, and the other train loaded with traffic destined to various intermediate points between Minneapolis and Albert Lea, or a local train, as you have described, the tonnage on both trains being equal, that

the cost of transportation of those trains from Minneapolis to Albert Lea would be, the through train let us say $100, and the local train $170?

A. I should say so.

Q. That is what you meant?

A. That is what I meant; but I can't take away the tonnage theory from the trains because if I do I don't have in my local trains or through trains—

Q. Is that tonnage theory in addition to that?

A. I stated that the through train in half the time and with half the stops would haul many times the amount of freight through that the local trains haul, and that it would cost 70 per cent more to run the train doing the lesser service.

Q. Well, that is what I wanted to know. I wanted to know whether in addition to this difference in the cost you also claim a difference in the cost per ton because of the different loading.

A. No, I take that into consideration as a factor, as an element.

Q. You take that into consideration in getting at your 70 per cent additional?

A. Yes, but suppose you run the trains empty, Mr. O'Brien.

Q. I am not talking of that. If my first question is what you meant, then I understand you.

A. Well, I have tried to be plain, but cross-examination will make it plain, I am sure, because I know what I am talking about, and if you don't understand me, Mr. O'Brien, I am willing to stay here all night until you understand what I mean.

Q. Well, I understand you to say that if two trains left Minneapolis upon the same day, one being a through train as you have described it and the other being a local train as you have described it—

A. Under the actual conditions obtaining on the M. & St. L. road as I examined the sheets.

Q. —that the cost of hauling the through train would be let us say $100, and the cost of hauling the local train would be $170?

A. I should say that is about the fact.

Q. Now, do you also say that the through train would carry, on an average, twice as much freight, twice as much tonnage as the local train?

A. If we didn't, we would be bankrupt.

Q. Well, is that what you say?

A. No, I didn't say that.

Q. Well, do you say that?

A. No, I say that it hauls many times as much. I don't believe but what it hauls ten times as much—not twice as much.

Q. Then the local train which would cost $170 would contain ten times as much tonnage as the through train which cost $100?

A Would contain ten times as much.

Mr. BUTLER: I think you said ten times where you meant one-tenth.

WITNESS: I believe that the through train would earn ten times as much as the local train that cost $70 more to run than the through train did; that is, that the through train costs $100, and your local train costs $170, the through train of flour or wheat will pay ten times as much to the Company as the local train.

Q. That wasn't the question I was asking you. I was asking you whether or not you claim that your through trains contained ten times as much tonnage as your local trains.

A. Oh, no, I didn't say that. I said many times. You could use ten times as an illustration if you desire, the same as you do the dollar and the $1.70.

Q. Well, do you know what the proportion is?

A. No; and it would require a great deal of time to get it up, but I do know what the proportion is for the trains that I

examined; and I think that I am speaking conservatively because I expected that to be brought out later, and I have that data prepared.

Mr. O'BRIEN: I just wanted to ascertain, Mr. Butler, if Mr. Tittemore meant that one hundred tons of freight transported on a through train cost $100 while one hundred tons of freight transported on a local train cost $170; he evidently does not mean that.

Mr. BUTLER: Well, have you got through?

Mr. O'BRIEN: Yes, that is all.

By Mr. BUTLER:

Q. With respect to the comparative train tonnage between the local and through trains, I understand you to say the local trains have the lesser tonnage.

A. Yes, sir.

Q. Are you prepared now to state the result of examination for any period with respect to the Albert Lea division on that point? I am not sure whether you indicated your present readiness or said that subsequently when you would be cross-examined you would have the data.

A. Well, I will later on have exact data and gotten up in such a way that it will be comprehensible, but I do find that in my examinations there is a considerable difference, but I can't segregate the local from the through by the memorandum I have made, so that I think it is better to let it go.

Q. We will defer that because the cross-examination will be taken up later and probably bring that out; if not, I will call it to mind again. Then, as I understand it, the elements of comparison are these: the tonnage of the local train is less, the tonnage of the local car less, than that of the through car?

A. Yes, because it is not of the same nature of traffic at all. By the very nature of the traffic it doesn't load so heavy.

Q. And the train travel is less?

A. Much less.

Q. The demand for fuel and train supplies is greater for the local than the through?

A. Yes.

Q. The scale of wages is higher?

A. Yes.

Q. And by reason of the difference in speed, the time consumed is more?

A. Yes.

Q. Now, with respect to the other divisions of your road in Minnesota or the other divisions of your road, are there upon the other divisions, the line that runs out to Watertown or the one that goes down to Storm Lake, operated regular through trains, regular scheduled through trains?

A. No; we had the wheat trains as I have described, but they run special.

Q. They are what you call extra trains, when the traffic justifies it?

A. Yes, sir.

Q. But in addition to that, you have the regular daily local trains, which as a general rule move all of the business, through and local?

A. Yes, sir, that is it. And my examination disclosed the fact that the tonnage on those trains was much less than half what it would be on the trains on the Albert Lea division taken as a whole. That is, take all the trains on those divisions and all the trains on the Albert Lea division, the tonnage would be twice as much on the Albert Lea division as on those divisions.

Q. That is, averaging the train tonnage of all trains on the Albert Lea division, and averaging the train tonnage on the rest of your line, the Albert Lea division would have double the average tonnage; is that it?

(No answer).

The MASTER: As I understand, a through car, for instance from Minneapolis to Watertown, unless it was special (as he

has explained) would be hauled in local trains.

WITNESS: Yes, your Honor.

The MASTER: Whereas, between Minneapolis and Albert Lea you have through trains, and cars from one point to the other would be hauled in through trains?

WITNESS: That is it. I notice, for instance, in a comparison of the Pacific division train miles, for instance, as compared with the Albert Lea division, that it stands on the average of 6891 miles to 10,253.7 miles; it is not double.

Q. Miles when?

A. Train miles for a year; that is the average per month for a year.

Q. About 60 to 100?

A. That is it.

Q. Now, referring to the subject touched upon by the Master: As I understand it, at certain times, especially during the grain-moving time, there are special or extra through trains from the West to the grain market?

A. Yes, sir.

Q. And I understood you to say that you assembled a number of cars or enough to make a train, at some point in Dakota and pulled out through as a solid train?

A. From that point, say to Minneapolis, although it might be assembled at the point out West by local trains.

Q. That is, that might be done in part by a local train gathering separate cars from the elevator and bringing them to this point Conde,—if that is the name of the place?

A. Yes, sir.

Q. Where it would be made into a train and pulled through?

A. From there to Minneapolis, solid.

Q. Now, let me get a little more of the detail of that. Would those cars while being assembled all be moved in an eastwardly direction? that is, would all those cars originate at points west of Conde, or would some be picked up and hauled westerly to

Conde and then pulled through?

A. All from west of Conde.

Q. Every movement would be in the direction of the market?

A. That is it.

Q. So that such a train as that would have no Minnesota business?

A. No; still I consider that a local train, and I imagine it would appear in our annual report,—the traffic would be in the item of local traffic, because the way-bill reads from and to a point on the M. & St. L. railroad. It is local traffic to the Minneapolis & St. Louis railroad, but it may be through traffic to a certain division of the road as we have discussed it here.

Q. Yes, but it would all be interstate business on your line?

A. Yes.

Q. That originated in Dakota and came into Minnesota?

A. Yes, sir.

Q. No matter whether destined to Chicago or beyond?

A. Yes, sir.

Q. Now, on that same east-and-west line of yours is there in Minnesota the same practice,—that is, is there any point in Minnesota where you are accustomed to assemble by local trains a trainload of grain, or other commodities and grain, taken together, and move it solid as a through train to Minneapolis, we will say?

A. For a short period of time; for instance, that might be the fact at Morton or at Winthrop, where we bring freight up from our Southwestern division; we might find freight enough there so that it would burden our local trains, we would put on a special engine and haul it through.

Q. And if that freight all originated in Minnesota and was taken to Minneapolis as the final destination of the property, so far as that movement was concerned that would be local or intrastate business?

A. I would say so, yes, sir.

Q. Now, with respect to west-going freight over that same division, when you run these extras in do you run an extra trainload out, or how is that on your road?

A. Well, that is governed by circumstances. We have to provide cars for the elevators to load to bring wheat in an easterly direction, and if the west-bound loaded movement doesn't take enough cars out there at the different stations, we run trains with empty cars in; but, as a general thing, our local trains are so thinly taken care of that we can handle a great many empties on them westbound.

Q. That is, the traffic is so thin on the local trains?

A. Yes, they are never burdened with traffic westbound.

Q. Now, in these local trains, then, as I understand it, you customarily haul both classes of business, that is, interstate and business local to Minnesota, in the same trains?

A. Yes, on the western line.

Q. That is what I mean.

A. Yes.

Q. And as a general thing, you haul all of both kinds of business in the same regular trains?

A. Yes, sir, no matter how many there may be.

Q. And does that include the line that runs southerly and goes across the southern boundary of Minnesota, finally reaching Estherville and Storm Lake?

A. That is, the Southwestern division?

Q. Yes.

A. Yes; I don't think that line would support one good train a week, but we have to run trains—we do run seven a week each way.

Q. So then, it is by reason of the thinness of the traffic that the business is not separated between that which is strictly local and strictly through on these two branches or divisions of your property?

A. That is true, and particularly on the Southwestern divi-

sion, where, as I say, I think one good engine could haul all of the business for a week in a train each way. That is, one train a week each way per day would take care of all the business on the road, but because of taking care of the local business we must run a local train or "peddling" train every day.

Q. Have you any means of telling us what earnings per mile of road that division that you have last referred to yields to your Company, by approximation or with any exactness?

A. I have a means, and I have seen the figures but I couldn't tell them today.

Q. Will you provide us with that later on?

A. I will.

Q. And also with respect to the western end?

A. Yes, sir.

Q. Make a comparison of earnings per mile of track with the Albert Lea division.

A. Yes, sir.

Q. I get the impression that as far as the roadbed and track and station facilities are concerned on your line in this State, you would be able to do more business than you have to do?

A. Yes, several times.

Q. Several times more?

A. Why, we only do a business of about $2500 in freight per mile of road.

Q. That includes both classes of business?

A. Both classes of freight business, and we have a plant able to do twice or three times that freight business; I mean so far as track and station buildings and water-tanks are concerned.

Q. So far as fixed properties are concerned?

A. So far as fixed properties are concerned.

Q. An increase of the business might require an increase in your rollingstock and equipment?

A. Yes.

Q. And I have understood you to say that the cost of doing business per unit is higher in case of thin or light traffic than in the case of denser traffic.

A. Yes, sir.

Q. That they bear a direct relation to each other,—the denser the traffic until you get to the point of congestion, the lower the cost of doing the unit of business?

A. Yes, sir.

Q. And, so far as your trackage facilities are concerned, it could be doubled several times before you get to the point of congestion?

A. Yes, sir; with slight terminal readjustments and improvements. We might have to make some changes in tracks; however, I think we could double our freight business without changing anything, because most all of our new line was built for a much heavier business than we are doing, and our Southwestern division evidently was intended to do at least three times what it is doing.

Adjourned until Saturday, October 17th at 10 A. M.

FEDERAL BUILDING, St. Paul, Minn., Saturday, October 17, 1908, the hearing was resumed at 10 o'clock A. M.

LESTER B. ELWOOD,

sworn on behalf of Complainant, testified:

By Mr. BUTLER:

Q. Your name is Lester B. Elwood?

A. Yes, sir.

Q. And you live at Minneapolis?

A. Yes, sir.

Q. And are engaged in the real estate business?

A. Yes, sir.

Q. You are the same Lester B. Elwood who testified in the

case of D. C. Shepard against the Northern Pacific and others before this Master recently?

A. Yes, sir.

Q. A case involving similar issues?

A. Yes, sir.

Q. With respect to the property owned by the Minneapolis & St. Louis Company, did you and Mr. F. E. Barney and J. Arthur Ridgeway make an appraisal of the Minneapolis & St. Louis property, in the same manner and upon the same basis, that you did the Northern Pacific property and as disclosed in your testimony in the Northern Pacific case?

A. Yes, sir, we did.

Q. And made, as a part of the report of that appraisal, the writing which I show you now under the caption "Valuation made by Lester B. Elwood, F. E. Barney and J. Arthur Ridgeway on real estate owned by Minneapolis & St. Louis Railway Company, in Minneapolis, Minnesota," and which is signed by you three gentlemen as appraisers?

A. Yes, sir.

Q. The valuation expressed here was the valuation that you gentlemen made?

A. It was.

Mr. BUTLER: I think this is in evidence in Mr. Cutler's testimony, though to be certain I will read it into the record, with Mr. O'Brien's permission: "From Twentieth avenue south to Cedar avenue, 60 cents per square foot; from Cedar avenue to Tenth avenue south, $1.25 per square foot; from Tenth avenue south to Seventh avenue south, $2.25 per square foot; from Sixth avenue south to Second avenue south, $3.25 per square foot; from Second avenue south to Second avenue north, $5 per square foot; from Second avenue north to First street north, $3 per square foot; from First street north to Third street north, $4 per square foot; from Third street north to Seventh street north, $4 per square foot; from Seventh

street north to Lyndale avenue, $1.50 per square foot; from Lyndale avenue to Laurel avenue, 75 cents per square foot; from Laurel avenue to Superior avenue, 50 cents per square foot; from Superior avenue to Franklin avenue 35 cents per square foot; from Franklin avenue to Twenty-fourth street west, 15 cents per square foot; from Twenty-fourth street west to the north line of government lot 5, 12½ cents per square foot; from the north line of government lot 5 to Lake street, 10 cents per square foot; from Lake street to the city limits on the west, 7½ cents per square foot. Lester B. Elwood, J. Arthur Ridgeway and Fred E. Barney."

The three last items referred to on Ex. 29 do not appear to have been embraced in the appraisal referred to. Those items are the Kenwood City lots, at $9450; St. Louis Park, one-half interest of Belt Line with the Chicago, Milwaukee & St. Paul Railway 6.375 acres at $2,000 per acre, $12,750, and the right-of-way from the city limits of Minneapolis to Hopkins, 30.086 acres, at $1,750 per acre, $52,651. The three items stated were not included in the appraisal, and we will not at this time offer testimony with respect to these three items. Mr. O'Brien and Mr. Morgan will furnish to us their opinion as to the value, and perhaps there will not be sufficient difference to justify testimony.

Mr. O'BRIEN: The Defendants concede that this witness, together with Mr. Ridgeway and Mr. Barney, made the appraisement and valuation of the property testified to by Mr. Elwood, at the same time and in the same manner as they appraised the property of the Northern Pacific Railway Company, located in Minneapolis, as to which Mr. Elwood and Mr. Barney have already testified in detail; and it is admitted that each of these witnesses would, if sworn at this time, testify that the appraisement so made by them was just and fair, to the best of their knowledge and judgment, and we are willing that the testimony given in the

case of Shepard against Northern Pacific Railway Company before this Master, showing the method and manner of the appraisement, the experience and competency of the appraisers, and any other portion of that testimony, either upon direct or cross-examination, relevant to the issues in this case, may be considered by the Master in this case.

Q. Can you fix the date or the dates within which the appraisal of the Minneapolis & St. Louis properties to which reference has been made in your testimony this morning was made?

A. We began December 15, 1906, and signed the reports on February 20, 1907.

Mr. O'BRIEN: In making the statement which I did with reference to the consideration of the testimony given in the Northern Pacific case, I intended to make it as broad as possible, with the idea that the Court would be at liberty to consider any of that testimony which would naturally apply to this case. Of course, there may be some of that testimony which refers to a specific piece of property that could hardly be said to apply to any other piece of property, but in so far as the testimony applies to the general tendency of the market, up or down, or conditions now as compared with conditions when this appraisement was made, and testimony of that sort which would be practically relevant in any case, the Master may consider it.

CROSS-EXAMINATION

By Mr. O'BRIEN:

Q. In 1906, Mr. Elwood, did you purchase blocks 2 and 3 in Minneapolis, those blocks being situated between Twentieth avenue north and Twenty-second avenue north?.

A. Yes, sir.

Q. You purchased those for the Omaha road, did you not?

A. I prefer not to answer that, Mr. O'Brien.

Q. Well, you subsequently deeded the lots to the Omaha road for a consideration of $1?

A. No, sir; I deeded them to E. S. Woodworth. I was employed by E. S. Woodworth to purchase the property and I deeded to him.

Q. Well, you subsequently deeded the property to Mr. Woodworth?

A. To Mr. E. S. Woodworth, yes, sir.

Q. You subsequently deeded the property to Mr. Woodworth for a consideration, as expressed in the deed, of $1?

A. Yes, sir.

Q. In making the purchase you were acting upon behalf of an undisclosed client?

A. Yes, sir.

Q. And Mr. Woodworth is in the same position, is he not?

A. Yes, sir.

Q. He is also acting for an undisclosed client?

A. I so understand it, yes, sir.

Q. And that method was taken by both of you so as to secure the property at a reasonable market value and not have its price raised by having the client disclosed as a result of the disclosure of who the client was?

A. Not entirely that. We did not wish it disclosed that we were buying all of the property, as we intended to do. We did not wish the client to know, nor did we wish the fact known that we wished to acquire all the property in that district. It was a large tract. We did not wish it understood that the same buyer was buying it.

Q. I don't want you to think I am making any criticism—

A. Oh, no.

Q. —as to the method—

A. No. I understand that.

Q. —because it is undoubtedly true, Mr. Elwood, that when

a person requires a large tract of land which is subdivided, if they publicly commence buying it piece-meal, the price upon the remaining property will undoubtedly go too high.

A. Yes.

Q. Now, those two blocks constitute about 4.24 acres, do they not?

A. I should think there were about two acres in each block, as near as I can remember.

Q. Do you remember what the consideration was for the two blocks?

A. Yes, sir.

Q. How much was it?

A. $20,500.

Q. The consideration as it appears in the record is $22,000.

A. I don't remember exactly.

Q. The consideration as it appears in the record is $22,000.

A. Then that was it.

Q. The true consideration appeared in the record?

A. Yes, sir.

Q. That would be $5,186 per acre?

A. Yes, if there were four acres, and I think that is about it.

Q. You purchased that in 1906?

A. About two years ago, I think.

Q. Well, was it not 1906?

A. I think so, Mr. O'Brien.

Q. Was it not within a few months of the time you made this appraisal of the railroad terminals?

A. Yes, sir, about the same time.

RE-DIRECT EXAMINATION

By Mr. BUTLER:

Q. I want to get an idea of the location of these blocks referred to in Mr. O'Brien's questions with respect to the

property of the Minneapolis & St. Louis Railroad Company. I have here the maps showing the location of its right-of-way, and you may refer to them.

Mr. O'BRIEN: I don't think it is near the Minneapolis & St. Louis property, Mr. Butler; but it is immediately adjoining Northern Pacific property.

Mr. BUTLER: So it is more germane, really, to that?

Mr. O'BRIEN: It is more germane to that.

Q. It is not within a mile or two, is it?

A. About a mile; there are thirteen blocks in a mile, and this is Twentieth avenue; it is over a mile.

Mr. O'BRIEN: It is contiguous to the Northern Pacific right-of-way but not to the Minneapolis & St. Louis,—is that not the case?

WITNESS: The Northern Pacific have a right-of-way in the street there. I doubt if they own any property, I am not sure as to that. The tracks do run along the side of this tract and cross the river there, I think, in the street.

Mr. O'BRIEN: This particular piece of property is not located adjacent to the right-of-way of the Minneapolis & St. Louis, but it is adjacent to the right-of-way of the Northern Pacific; and where we have a situation in which these three gentlemen make a general appraisement of all of these railroad properties and then the engineer in behalf of the State makes an appraisement of all of these properties, it seems entirely proper that the whole matter should be considered more or less together, and I don't think that can be avoided.

Mr. BUTLER: Well, the purpose of my question was to show what relation, if any, it had to the Minneapolis & St. Louis property. I was aware that it was probably near other railroad property.

Q. That purchase was about $22,000?

A. Yes.

Q. Did you afterwards receive any application from any-

body to quote a price or any offer on it?

A. Yes, sir.

Q. How long after you purchased it?

A. Within a year.

Q. Was it the same tract that was referred to in Mr. O'Brien's question that you received an offer for?

A. Part of the same tract, one of the blocks.

Q. Do you remember which one?

A. The block that has a frontage on Twentieth avenue north.

Q. And in your purchase was the price of that block segregated?

A. No, sir, they were put in together.

Q. Bought at a lump sum of $22,000?

A. Yes, sir.

Q. And what offer did you receive upon the property?

A. I received an offer of $20,000 for the block that was on Twentieth avenue north; possibly not an offer, the gentleman asked me to name a price. I told him it wasn't on the market. He came back and asked if I would consider $20,000 for the property; he didn't say he would give that. That was the way it was stated.

Q. Was that about half in area of the land that you paid $22,000 for?

A. Just half.

Q. Just half?

A. Well, about half.

Q. The blocks were about the same size?

A. Yes, sir.

Q. And with respect to the comparative market value how was it? Was it worth half as much as the two or less than half or more than half?

A. This particular block is worth more somewhat than half the value of the two blocks taken together.

Q. Could you express by percentage—60 per cent of the whole, or 55 or 75 or 85?

A. I should say about 60 per cent of the whole, Mr. Butler.

Q. Did you, about the same time, purchase any other property in the same neighborhood?

A. I did, and since.

Q. And how did the prices paid for the other property compare with the price paid for that particular property concerning which Mr. O'Brien asked you?

A. I bought property of Mr. Eichorn at $2,250 a lot, which would be on the basis of $22,500 a block.

Q. And how much an acre?

A. About two acres in a block; about ten 55-foot lots.

Q. That would be about ten or eleven thousand dollars an acre, as I follow your answers.

A. Yes, sir.

Mr. BUTLER: And, Mr. O'Brien, you disclosed that the purchase you called attention to was five or six thousand dollars an acre?

Mr. O'BRIEN: $5,186 per acre.

WITNESS: I bought a block of Bardwell, Robinson & Co., smaller lots, about fourteen lots in a block, and paid them at the rate of $2,050 a lot, buying thirteen lots of the block from them. They did not own the other lots.

Q. And that would be about how much per acre, approximately?

A. Why, from eleven to twelve thousand dollars an acre.

Q. And were these sales, that you have referred to in answer to my question, of land similar to the lands referred to in Mr. O'Brien's questions?

A. The two blocks named by Mr. O'Brien are about twenty feet below the grade of the right-of-way of the Northern Pacific and a block away from the Northern Pacific. The Bardwell-Robinson property is the same comparative grade and a

block away from the Northern Pacific property; the Eichorn lots are of the same grade and adjoin or face on the Northern Pacific right-of-way.

Q. Some of it was at the same level as the tracts referred to?

A. The Eichorn was on the same level as the Northern Pacific; the other properties referred to were sixteen to twenty feet below.

Q. But with respect to the location?

A. Yes, they were all within the same location.

Q. All that you have described?

A. All between First street and the river, Twentieth avenue and Twenty-fourth avenue north.

Q. Now, with respect to the character of these low lots or blocks that you referred to in answer to Mr. O'Brien's question, the bottom of it,—was it a hard bottom, that would sustain filling, or hard, or do you know about that?

A. I do not know about that.

Mr. O'BRIEN: I am perfectly willing to make this statement: That if, in the opinion of the Master, in making his findings, there should be added to the value of the real estate owned by the defendant Railroad Company a sum for its right-of-way upon public highways in Minnesota, either in the city of Minneapolis or elsewhere, and further, that there should be added to that sum an additional amount upon the theory that, if it were now necessary to reproduce the road, damages would be awarded to abutting property owners upon the public highways so occupied, and that the further assumption should be adopted by the Master that, in that case, the values of the abutting property would be the same as they are now, (the only change in the situation being the non-existence of the railroad,) that the Master may consider the general evidence in the case as to real estate values in determining the amount which he should so allow. This admission is made without in

any way or to any extent conceding the propriety of allowing any additional sum for the use of the highways or without any admission or concession that in that, or in any other case, the cost of reproduction should be ascertained by assuming the non-existence of the railroad, the existence of other property in its present condition, and that now to reproduce the road damages to abutting property owners of any kind should be awarded. Our position upon that is the same as has already been stated, that the cost of reproduction is a proper method for arriving at the market values of properties which are upon the market, such as locomotives, cars, rails, equipment, and the actual value of real estate, possibly, but that to add to that market value any multiple because of imaginary severance damage or damages to buildings or improvements which might or might not have been erected upon the property, is simply a play upon words and an attempt to extend the meaning of the Courts when they have said that the cost of reproduction was one of the elements to be taken into consideration to a point which any reasonable person must realize establishes no substantive fact.

Mr. BUTLER: I am not sure, Mr. O'Brien, that I get your intention with respect to the consent. I understand it that the Master, in getting at the value of the property or the reproduction cost of the property as it has been described in the testimony, if he thinks proper under the circumstances to consider the damages to abutting owners in case of occupancy in the street, may take the general testimony in the case and establish the amount of such damages, and, together with it, any other item or element that he deems proper, the purpose being to avoid the taking of testimony to establish what the fact be.

Mr. O'BRIEN: Yes, sir.

Adjourned until Thursday, October 22nd, at 10 A. M.

FEDERAL BUILDING, St. Paul, Minn., Saturday, February 6, 1909, the hearing was resumed at 11 A. M.

JAMES N. TITTEMORE,
recalled for further cross-examination, testified.

By Mr. O'BRIEN:

Q. Mr. Tittemore, I call your attention to Complainant's Ex. 14–A–Tittemore, headed "Recapitulation of other interstate affected," and the second subdivision upon that sheet is "Recapitulation of all business affected." In the second subdivision I find the following, "Minnesota state, ton miles, 20,074,-164; tonnage in pounds, 365,457,403; M. & St. L. earnings, $355,405.57; loss A, $51,802.22; loss B, $70,760.83; percentage of loss A, 14.58; B, 19.91." We had considerable difficulty in understanding this exhibit at the time it was presented, and I now ask you if the item in the second subdivision upon this sheet under the column "Loss A" of $51,802.22, is your claim as to what the reduction in the earnings of the Minneapolis & St. Louis Railroad Company from the carriage of intrastate in the state of Minnesota would have been during the year ending June 30, 1906, if the rates had been reduced from the rates which are now in effect to the rates provided by Chapter 232, Laws of 1907.

A. The loss of $51,802.22 represents the loss to the M. & St. L. if it were reduced from the "voluntary basis" which we put in effect involuntarily because of competition down to Statute 232.

Q. Those voluntary rates are now in effect, are they not?

A. I believe they are, Mr. O'Brien.

Q. Then your answer to my question is an affirmative one?

A. Yes, if I understand your question.

Q. My question is simply whether or not that is the amount which you claim the revenue would have been reduced from the carriage of commodities intrastate in the state of Minnesota if the rates upon such commodities were changed from the ac-

tual present rates to the rates provided by Chapter 232.

A. I think that is correct, but I don't want to change the meaning of this sheet. The sheet shows exactly what the loss would be under certain conditions.

Q. Well, if you cannot understand the sheet so as to answer the question, how do you expect us to?

A. Because the sheet is perfectly plain to me.

Q. Then will you explain it to us and tell me whether that question is right or not?

A. If I understand the question, Mr. O'Brien is right, but I am not certain that I do understand the question.

Mr. O'BRIEN: (To Mr. Butler) That is what you understand, isn't it?

Mr. BUTLER: I think so. That is the difference between the present and proposed rates on the Minnesota local business in commodities.

Mr. O'BRIEN: I am trying to eliminate the confusion that we got into over the voluntary rates and the rates in force during 1906 and the rates provided by Chapter 232, so we can ascertain what is the net claim as between the rates at present and the rates which would be in force under Chapter 232 applied to the business of 1906.

WITNESS: Yes, Mr. O'Brien is right. That is the loss—

The MASTER: Assuming that they had put in these statute rates, they would have lost so much on the business of that year.

Mr. O'BRIEN: The way I understand it is this, your Honor. They have the tonnage, of course, for the year ending June 30, 1906. That tonnage was carried at certain rates then in force. Before Chapter 232 was passed, a reduction had been made in those rates, therefore we cannot properly compare Chapter 232 with the old rates but we must compare it with the new rate to ascertain how much the actual reduction would be. So that the new rates were first applied to the tonnage of 1906 and the revenue ascertained, then the rates provided by Chapter 232

were applied to the same tonnage and the revenue obtained, and $51,802.22 is the difference between what that tonnage would have yielded under the actual rates and what it would yield under the proposed rates of Chapter 232.

Mr. BUTLER: Under the now actual rates.

Mr. O'BRIEN: Certainly, the now actual rates.

The MASTER: Not the rates that they did in fact collect, but the now actual rates.

Mr. O'BRIEN: Yes; make that "*now* actual rates."

Q. I now call your attention to Exhibit 21–Tittemore. The second last column in Exhibit 21, marked column 9, shows the total amount which you claim the annual revenue of the Minneapolis & St. Louis Railroad Company from intrastate freight moving upon class rates or what we have called merchandise freight in the state of Minnesota was reduced by the order of the Commission, and that is based upon the period from April 1, 1906, to March 31, 1907?

A. You are right.

Q. And that total amount is $33,367.30?

A. Yes, sir.

Q. If we add to that the sum of $51,802.22, giving a total of $85,169.52, we arrive at what you claim would be the annual reduction in the freight revenues of the Minneapolis & St. Louis Railroad Company by the direct operation of the prescribed rates to Minnesota traffic?

A. The sum of the losses on the two sheets is $85,169.52.

Q. I now call your attention to Exhibit 23–Tittemore. Double-column 5 gives the rate upon wheat from the stations in Minnesota shown in column 1 to Chicago?

A. It does, yes.

Q. And also the other commodities shown in column 3?

A. Yes, sir.

Q. The rate from Manchester to Chicago is at present divided between the Minneapolis & St. Louis and, let us say, the

Illinois Central, equally?

A. Yes.

Q. If the statutory rate allowed by Chapter 232 for a haul of 389 miles were applied to that same haul, the rate would be reduced to 11.9 cents, as shown in column 6?

A. Yes, sir.

Q. One-half of which would be 5.9 cents?

A. Yes, sir.

Q. It would be a fraction more than that?

A. Yes.

Q. It would be 5.95 cents?

A. Yes, it would be one-half of 11.9 cents.

Q. In column 9, however, you have stated that the amount which the Minneapolis & St. Louis road would receive would be 3.3 cents, under the statutory basis?

A. That is what would be allowed if you used the statutory basis for a basis.

Q. Then in preparing Exhibit 23–Tittemore and in giving this illustration to the Court as to the effect upon the Minneapolis & St. Louis road of applying these schedules to the interstate business, you did not assume that the same proportion of division would be maintained between the Minneapolis & St. Louis and the other roads?

A. I did not assume that because I knew it could not be.

Q. You know that it could not be?

A. I know that it would not be allowed.

Q. That is simply a prediction upon your part, is it not?

A. Well, that is a prediction based upon the actual experience of fifteen years.

Q. You have not carried into this table the same system relatively for the division of the through rate that is in actual operation upon the line of the Minneapolis & St. Louis Railroad Company?

A. The division of the wheat.

Q. Can't you answer that yes or no, Mr. Tittemore?

A. Well, ask it again and if it is possible I will.

Q. You have not prepared these tables so that they would show a division of the new rate assuming that it would be put in operation in the same proportion or upon the same basis as the present rate is divided?

A. I have not prepared such a statement.

Q. And that is true as to each item appearing on Exhibit 23?

A. I presume that is. I don't know that. It divides differently all through; for instance, as you will see, through the different junctions.

Q. But in no case have you attempted to make the division upon the same proportion or upon the same basis?

A. No, because on wheat and on flour the 7½-cent proportion comes in there all the time, and I could not do that. That would change the basis on all the rates, all the conditions in the state of Minnesota on that commodity and its product.

Q. You think that while the Minneapolis & St. Louis road constantly hauls flour from Minneapolis to Albert Lea without any compensation for that haul, if the through rate from points in Minnesota upon wheat were reduced, there could be no reduction upon the portion of that rate which the Illinois Central would receive?

A. I think that is true. I think the Minneapolis & St. Louis road would be out of the business unless she could find some other outlet.

Q. And the patriotic desire of the railroad companies to maintain equality of markets would not be a sufficient inducement to the Illinois Central to accept any lower amount?

A. Not where the Illinois Central does not come into the Twin Cities and where her patriotism would come out of her treasury.

Q. That is a case where this "blanket of justice and equity"

which you described in your direct testimony the railroads cast over the various communities would not be spread?

A. Where there is a difference in the property interests, the blanket rate might not be spread, but the original blanket comes from the fact that a road owns or controls a large area of territory or a large number of railroads; that forces your blanket.

Q. Well, I was not talking of the blanket of rates. I want to recall to your mind that in your direct examination you said the railroads had spread a blanket of justice and equity and fairness over all of the Northwestern territory.

A. I think that is true.

Q. But this would be a case where they would refuse to cover the naked communities with that mantle of charity and justice?

A. The Minneapolis & St. Louis could not get under the blanket. I think that is the fact.

Q. There would be three in the bed?

A. I think so.

Q. Now, I call your attention to Ex. 24–Tittemore. Double-column 6 in Exhibit 24 gives the through rate upon coal from the stations shown in column 2 to stations shown in column 1 *via* Albert Lea and the Minnesota Transfer?

A. Yes, sir.

Q. I now call your attention to the rate upon hard coal, the first item, from Milwaukee to Manchester, 324 miles, $2.25; is that right?

A. Yes, sir.

Q. The Minneapolis & St. Louis hauls that coal for seven miles, that is, from Albert Lea to Manchester, and receives for that haul 90 cents?

A. As per column 9.

Q. As per column 9?

A. Yes, sir.

Q. 90 cents is what percentage of $2.25?

A. 40 per cent.

Q. If that coal were hauled from Milwaukee upon the statutory basis, the rate would be $1.99?

A. Yes, sir, as per column 7.

Q. And what is 40 per cent of $1.99?

A. 79.6 cents.

Q. So that if the Minneapolis & St. Louis obtained the same proportion of the new rate, if it were in force, as it does now, it would receive 80 cents per ton for the haul of seven miles instead of 62 cents, as you have shown in double-column 10?

A. Yes.

Q. And you have not attempted in this table Exhibit 24, to show what the proportion of the Minneapolis & St. Louis road would be of the through rate upon the new basis upon the assumption that it would receive the same percentage of the new rate that it now does of the old rate?

A. I don't think that is shown in this table, but I don't mean to say that it is not figured in the general computation that shows the effect on interstate business.

Q. I am speaking of this table.

A. It is not shown in this table, Mr. O'Brien.

Q. And that same condition extends through every item upon this table?

A. Yes, I think it does.

Q. It consists merely of an arbitrary division of an imaginary rate for interstate traffic adopted by you?

A. No, not imaginary, Mr. O'Brien; we have used actual rates, actual routes, actual tonnage; we have taken the routes *via* which our tonnage moves.

Q. It is imaginary in the sense that it is not a rate which any authority has ordered in?

A. Well, it has been ordered in but not put in.

Q. Has there been any rate ordered in from Milwaukee to Manchester?

A. No.

Q. It is upon the assumption, or as I choose to say, upon imagining that the rate fixed by the statute of Minnesota would be applied to the haul from Milwaukee to Manchester?

A. That is it exactly.

Q. And to the other points. And even upon that assumption, you have not attempted to show what the rates would be if they were divided upon the same proportion as they are divided at present?

A. That doesn't appear in this sheet, Exhibit 24.

Q. So the only actual facts that are taken into consideration in this statement are the physical facts as to the existence of the different localities and the distance they are apart?

A. Well, it shows other conditions.

Q. I now call your attention to Exhibit 25. That is a table prepared by you, is it?

A. Yes, sir.

Q. For the purpose of illustrating the effect which the enforcement of the order of the Commission would have upon the revenue to be derived by the Minneapolis & St. Louis from carrying merchandise?

A. Yes, sir.

Q. Upon interstate hauls?

A. Yes, sir.

Q. The character of freight included in the Commission's order?

A. Yes, sir.

Q. The present rate upon merchandise from Chicago to Manchester *via* Albert Lea of the first class is 60 cents per hundred pounds?

A. Yes, sir.

Q. How long has that rate been in effect?

A. I don't know, but a long time.

Q. Several years?

A. Yes.

Q. The Minneapolis & St. Louis receives 24 cents or 40 per cent of that through amount, as shown in column 9?

A. Yes, sir.

Q. The Commission's order applied to a haul of that distance, 389 miles, would give a rate on merchandise of the first class of 68.84 cents?

A. Yes, sir, as per column 7.

Q. 40 per cent of which would be 27.53 cents instead of 12.98 cents which you show in double-column 10?

A. Yes, it figures that way.

Q. The Illinois Central receives of the present rate 36 cents, does it not?

A. Yes, sir.

Q. And if the new rate were in operation and the Minneapolis & St. Louis received 27.53 cents, it would leave for the Illinois Central for its proportion 41.31 cents. Do you claim that the same argument applies to merchandise that you said to wheat?

A. I claim that it applies to any of those commodities, but you have taken an isolated case there, Mr. O'Brien, that would not be fair.

Q. I am taking the item given by you and the figures given by you.

A. Suppose the tonnage moved by—

Q. Never mind. Confine ourselves to the item upon this table. The result of the operation of that rate and the operation of the new rates as you claim and of the retention by the Minneapolis & St. Louis of the same proportion, 40 per cent, would result in an increase to each of you, to the Illinois Central and to the Minneapolis & St. Louis?

A. On that figure it would, yes.

Q. Do you claim that there would be any practical question that would interfere with the Minneapolis & St. Louis con-

tinuing to get 40 per cent of the new rate?

A. At Manchester?

Q. At Manchester.

A. I do.

Q. And what would that be?

A. Why, Manchester would not be considered at all in the beginning. In the negotiations it is an incident merely in the traffic. The other routes, the relations of the other roads leading into Manchester from their junctions from all points would affect every single one of those rates. If Manchester was alone, Mr. O'Brien, in merchandise or in wheat, I have no doubt that the Minneapolis & St. Louis road and the Illinois Central might want to have any rates put in that would increase their revenues, and they would not oppose it, and that might appear to be the case in the case of Manchester; but Manchester would not be the pivotal point to which the situation extends, and this statement doesn't indicate that if illustrated right through.

Q. Why did you use Manchester?

A. We have used Manchester the same as we have every other station, and if you will keep on with all the other stations, with their varying mileages and varying routes, then we have got the whole case.

Q. Did you intend to claim to the Court from this exhibit that the result of the operation of the Commission's rates, so far as the Minneapolis & St. Louis road was concerned, would be as shown in double-column 10 and double-column 11 or either of them?

A. That was not the intention of the exhibit.

Q. That was not the intention?

A. No.

Mr. BUTLER: With respect to Exhibits 24, 25 and 26, the purpose of these exhibits was, in the main, explanatory of testimony elicited in cross-examination, during which cross-examination a number of instances were called to attention of trans-

portation by the Minneapolis & St. Louis road in connection with other roads of interstate business. The distance hauled by the Minneapolis & St. Louis road was called for, the through rate was called for, the amount it received on the division was called for, and comparison of the amount that was received on the division was made with the allowance in the schedules in question for an equal distance hauled, beginning at the top of the schedule and reading down to the distance in question; and we apprehended that it might be claimed from such instances that the interstate rates themselves were out of relation with local rates, and the purpose of the exhibits which I mention was to compare through rate with through rate; that is to say, take the distance that the through business moved, extend the tariff of the state to the equal distance where such extension is necessary, that is, where the distance hauled exceeds the distance stated in the tariff following the building up of the tariff, the principle upon which it was constructed, then compare the amount received by the Minneapolis & St Louis on the divisions with the amount allowed in the tariff—first, as they did in cross-examination by reading from the top of the tariff down, which would include both terminal services and the allowance made for the straight-away haul for the distance in question; and next read at the other end of the tariff and compare the amount received with the distance which would be allowed at the end of the haul, the Minneapolis & St. Louis being the end of the haul, which would include neither terminal. It would be right, if the end haul were to be compared, of course, to divide the terminal charges (if they were to be considered equal) by two and add to the end haul, in column 11; half of the terminal allowance if it is to be considered that the terminal allowance in the first figure of these tariffs is the same at each end—concerning which there is as yet, I think, no testimony. That was the purpose of these exhibits, and inasmuch as my statement (which Mr. O'Brien calls my attention

to in the nineteenth day's hearing at page 875, transcript) was not understood by him as I intended to have it, I make this statement. I think, however, that the reading of the statement there, and in connection with all that was said there, is precisely what I have intended to make clear by this statement.

Recess until 2 P. M.

AFTERNOON SESSION.

Q. Now, Mr. Tittemore, this same situation is found in Exhibits 25 and 26–Tittemore, is it not?

A. Will you make your question just a little broader,—what condition?

Q. That the comparisons are made upon this arbitrary basis that you have described with regard to Ex. 24.

A. Yes, the comparisons are made on an arbitrary basis.

Q. And in no case is it attempted to show what the rate would be if the Commission's rate were established for the entire haul, and the Minneapolis & St. Louis received the same proportion of the new interstate rate that they now receive of the interstate rate?

A. These statements were not made for that purpose and do not show that.

Q. So that these statements cannot be claimed as applying to any existing fact or facts which would exist under any circumstances?

A. Well, part of the statement would and part would not. Some of it is conjectural.

Q. The mileage is the same, the distance from Milwaukee to Albert Lea would be the same, without regard to the schedule?

A. And the present earnings would be the same.

Q. But the exhibits, so far as showing what results would be arrived at or what earnings would be obtained, do not purport to show anything in connection with that?

A. No.

Q. Mr. Tittemore, the great bulk of the coal brought to the state of Minnesota is brought first to the Head of the Lakes?

A. That I don't know. That would not be so with the M. & St. L.

Q. Well, I said the bulk of the coal brought to the state of Minnesota.

A. I doubt very much whether that is true.

Q. The controlling factor in coal rates is the shipments by way of the lakes, is it not?

A. Yes. Yes and no, but if there were no Lake Superior and no short mileage to St. Paul and Minneapolis, the conditions would not be what they are now, probably. It is the controlling factor, I think.

Q. And the Twin Cities constitute the distributing center for coal, do they not?

A. They constitute the distributing center, but not primarily the distributing center of coal.

Q. The Twin Cities constitute the main distributing center for the state, do they not?

A. No. Not if I understand your question correctly. They concentrate coal there in cars and reconsign and change the billing to other points in the state, but that is usually just outside of the Twin Cities.

Q. Well, of course, when I spoke of the Twin Cities, I included the Transfer.

A. Yes. Well, the business to the southern part of the state largely passes through the Transfer from Duluth or through the Twin Cities; but in the sense that a large amount of coal is brought into Minneapolis and St. Paul and Minnesota Transfer and held there and distributed from there as if it were the dock at Duluth, that is not the condition.

Q. But the great bulk of the coal in the state is brought to the Twin Cities and the Minnesota Transfer and from there distributed, not stored there, but distributed immediately?

A. Well, there is a large tonnage comes through there, I don't know just how much.

Q. And the rate to the Twin Cities by way of Duluth is the rate which must be met upon the all-rail haul of coal, is it not?

A. I don't quite understand the question, Mr. O'Brien. You say the rate *via* Duluth. Do you mean the water rate and the rail rate combined? The rate from Duluth to Minneapolis does control the rate from these other points.

Q. You mean the other lake points?

A. The other lake ports, yes.

Q. The rate from Duluth to St. Paul controls the rate from Ashland, Superior, Manitowoc, Milwaukee and Gladstone?

A. Yes, sir.

Q. All of those places are much more distant from St. Paul than is Duluth?

A. Yes.

Q. And the Duluth rate is met by the roads touching those points?

A. I don't know that it is always the same rate. That is true, but there is a relation between the rates.

Q. Isn't it the same rate?

A. No; for instance, the rate from Milwaukee to Minneapolis would not be the same as the rate from Duluth to Minneapolis on soft coal.

Q. The rate from Duluth to the Twin Cities is not changed by Chapter 232?

A. I believe not.

Q. The rate upon soft coal is 90 cents per ton now?

A. Yes, sir.

Q. And Chapter 232 upon the mileage basis would yield a slight fraction more than that?

A. Yes, sir.

Q. Your rate upon soft coal from Peoria is $1.40?

A. Yes, sir.

Q. And if I understood your testimony upon the direct examination, the claim you made was that if the 90-cent rates from Duluth to points in your territory were reduced, it would compel a reduction of the rate of $1.40?

A. Yes,—put us out of the business altogether.

Q. Put you out of the business altogether?

A. Yes, sir.

Q. Now, the coal that is hauled at that rate of $1.40 only extends to Minneapolis?

A. The $1.40 rate applies to all points on the Minneapolis & St. Louis road from Manchester to Minneapolis.

Q. Yes, coming by way of Albert Lea, the rate extends only to Minneapolis?

A. Yes.

Q. So that the test as to whether or not the proposed rates would affect the rate from Peoria to Minneapolis would be to compare rates to that point, would it not?

A. I don't quite get the question, Mr. O'Brien.

Q. Well, you say you have a rate from Peoria to Minneapolis of $1.40 per ton?

A. Yes, sir.

Q. And your complaint is that if the rates fixed by Chapter 232 upon soft coal became operative, such new rate would constitute an interference with your rate from Peoria to Minneapolis?

A. From Peoria to Minneapolis, yes, I claim that; but the statute—

Q. Just wait a moment. This $1.40-rate stops at Minneapolis on your road?

A. Yes.

Q. And it meets a $1.40-rate in force on the Burlington road at Minneapolis?

A. Yes.

Q. Now, if Chapter 232 does not change the rate upon soft

coal from Duluth to Minneapolis, it does not disturb the present relation between the rates on soft coal to Minneapolis and the rates upon soft coal to Minneapolis on your road from Peoria?

A. I don't remember just how much; Chapter 232 disturbs all the other coal rates besides the 90-cent rate.

Q. It doesn't disturb any of the coal rates to Minneapolis?

A. Well, it might disturb rates out of Minneapolis.

Q. That, Mr. Tittemore, is another question. I am asking you to explain how this rate from Peoria to Minneapolis of $1.40 which is now maintained (and I suppose you claim bears a proper relation to the present rate from Duluth) is affected by the adoption of Chapter 232, when the rates upon coal from Duluth to Minneapolis are not changed by that law.

A. I would have to see the figures and papers that I testified from in order to tell you just how I made my deductions.

Q. In addition to that, Mr. Tittemore, the coal that comes by way of Duluth has already paid two freight charges, has it not?

A. It has probably paid a water rate up to Duluth.

Q. Do you know what the rate is from the Ohio and Pennsylvania mines to the lake ports?

A. Do you mean all-rail?

Q. By rail from the mine to the lake ports.

A. Why, I know what the rate is, for instance, from the Hocking field up to the Lake Erie ports.

Q. How much is that?

A. Probably would be 90 cents a ton.

Q. The rate on the lake from the Erie port to Duluth is 30 cents a ton, is it not?

A. That would be pretty hard to say. It couldn't be proven what the average would be.

The MASTER: All kinds of rates, do you mean?

WITNESS: Yes, so far as water is concerned, any kind of a rate.

Q. Do you know what it costs to handle the coal at the docks at Duluth?

A. No; I happen to have been in a meeting adjusting those rates this past week, and I saw six different statements.

Q. Now, if you assume that that rate from the mine to the lake port is 99 cents, the rate upon the lake 30 cents, the cost of handling on the docks at Duluth 50 cents, and the rate from Duluth to Minneapolis 90 cents, you have a total cost of transportation upon that coal from the mine to Minneapolis of $2.60, have you not?

A. The way that is figured, yes.

Q. Now, your rate from Peoria to Minneapolis is $1.40?

A. Yes.

Q. The Hocking Valley coal is a better quality of coal than the Peoria coal, is it not?

A. Yes, but it doesn't come up to the Head of the Lakes in any great quantity.

Q. The soft coal that comes by way of the lakes is a better quality of coal than the coal at Peoria?

A. A very much better quality of coal than what we bring in.

Q. Now, from the mine to Minneapolis, in the case of the Duluth coal, the cost, on the assumption I have made, is $2.60, and from the mine to Minneapolis upon your road is $1.40; will you explain how any difference in the rates charged from Minneapolis to other points in the state upon Duluth coal can compel a change in your rate from the mine to Minneapolis now $1.40?

A. It is entirely a question of grade of coal and not of freight rates. If there were no competition in the state of Minnesota, that might be true; but the cheaper grades of coal in Illinois are the grades of coal that are brought into the state by other roads which compels the $1.40 rate *via* the Iowa Central and the M. & St. L.

Q. If you maintain your rate of $1.40, you don't increase

the price of your coal any, do you?

A. I don't know what you mean by that.

Q. Your coal is just as cheap as it ever was?

A. Yes, but if you change your $1.40 rate you change the price of your coal to the consumer.

Q. Yes, when you change your $1.40 rate, but we are assuming now that you don't change your $1.40 rate; the coal is just as cheap as it ever was?

A. Yes, but the Duluth coal can't get in on the M. & St. L. road. It isn't wanted there.

Q. Whether it is wanted there or not, this doesn't interfere with your rates in any way?

A. Yes, it does.

Q. A ton of coal will produce just as much horse power as it did before the change in rates, and the price remains the same?

A. But your Duluth coal costs too much. Another thing, if you tried to get all the coal from Duluth for the state of Minnesota, you would produce a monopoly at the Head of the Lakes. In the first place, they couldn't furnish the coal, Mr. O'Brien, and the industries on the Minneapolis & St. Louis road cannot use the coal in competition with the Illinois coal.

Q. Well, do you claim that a reduction in the coal rate from Duluth increases the price of the coal from Peoria? I thought what you claimed was that it was a loss.

A. I claim that the relation of the rates would produce a loss.

Q. Well, I am speaking of the actual facts. You could haul the same coal at the same rate and deliver it to the same industries, couldn't you?

A. I believe if the coal rate from Duluth to Minneapolis were reduced and the rates from the other points not reduced, it would throw all of the business to Duluth and create a monopoly there that would advance the price of coal at Duluth

to such an extent as to dry up a lot of industries in Minnesota; it would throw the coal out of competition.

Q. But we now have found that the central point in the state, the distributing center, is left exactly in the same condition that it was before.

A. What center is that?

Q. The Twin Cities and the Minnesota Transfer. Your coal from Peoria came there at $1.40 a ton; the other coal, from Duluth, came there at an expense of $2.60 a ton.

A. Well, but that Minneapolis rate is not the serious rate for the Minneapolis & St. Louis road; the rate that is fixed from Duluth on a continuous mileage down to Montgomery and to its milling points is where it disturbs the rates on the Minneapolis & St. Louis and forces a reduction at other points.

Q. Now, isn't this the fact: that if the rates upon coal in the state are reduced to such a point that the coal coming by way of Duluth can be advantageously sold in competition along the line of your road with the coal coming from Peoria, it will reduce the amount of coal sold upon the line of your road from the Peoria mines?

A. That might not work out that way, because the Peoria coal or the other Illinois district coal can get into all of our junctions by other roads.

Q. And isn't it simply a question as to how much of the Illinois coal will be sold upon the line of your road?

A. Well, it is surely a question as to the amount of coal that would be sold on the road, but I wouldn't say it was always a case of the amount of coal.

Q. And you cannot at this time show why the $1.40 rate to Minneapolis from the Peoria mines would be changed by the passage of Chapter 232, so long as the rate now maintained from Duluth to Minneapolis is not changed by that law?

A. It never has occurred to me that that was essential to

show, because if I owned every share of stock of the Minneapolis & St. Louis Railroad, and the Minneapolis coal was the only coal that was involved, I would go out of the business before I would haul it for the low rates that it hauls it for; but when you take the industries on the Minneapolis & St. Louis road, that is a different proposition.

Q. Can you show how the industries on the Minneapolis & St. Louis road would be compelled to pay a higher rate for coal under Chapter 232 than they are now paying?

A. No, but we have undertaken to show, and it is quite evident that by a change of those rates, it forces a readjustment of the coal conditions on our road for our industries that compels them to close.

Q. Can you show how any industry on your road would be compelled to pay a higher rate for coal under the operation of Chapter 232 than they are at present?

A. I don't get quite what you—If you reduce the rate on coal from Duluth to Montgomery, for instance, over the Milwaukee railroad, and then do not reduce the $1.40 rate over the M. & St. L., you do not advance the coal rates from any point, and no shipper or producer will have to pay any more freight rate, because there has been an actual reduction; but if it has the effect of compelling the industry to purchase a higher priced coal or go out of his business, you dry up your industry and in that way make a great loss to your Minneapolis & St. Louis road.

Q. Can you explain how any shipper, any industry, would be compelled to pay a higher price for coal because of the enforcement of Chapter 232 than it does at present?

A. Our industries use a coal that we get from Illinois that sometimes sells as low as 50 cents a ton, (that is a slack coal or a pea and nut coal, for instance, they get it very cheap); there is no such character or kind of coal to be purchased at Duluth.

Q. Do you mean 50 cents a ton at the mine?

A. At the mine,—oftentimes. Sometimes it is higher than that; it is sometimes 75 cents and sometimes $1.

Q. And your charge upon that is $1.40 for hauling to Minneapolis?

A. Yes.

Q. That makes the total cost of that coal at Minneapolis $2.10?

A. Yes.

Q. No coal can be brought by way of Duluth, where the carrying charges alone amount to less than $2.60, if the items that I have given you are correct?

A. If they are anywhere near correct, but I couldn't testify to that because I don't know.

Q. Well, if they are correct?

A. Well, if they are correct, then the industries on our road cannot buy coal at Duluth and pay the rate that you refer to and keep in competition with some other mill on some other road that pays a less rate.

Q. But is there anything in that situation which prevents you continuing to furnish the industries this same 50-cent coal at a freight charge of $1.40 to Minneapolis?

A. I wouldn't say that there was anything that prevented our reducing our rate, except—

Q. There is nothing in this chapter which compels you to increase your rate, is there?

A. No; no, it compels us to reduce our rate.

Q. And if the total rate from other mines *via* Duluth largely exceeds your rate, there is nothing in this to compel you to reduce your rate?

A. I don't know about the rate *via* Duluth, except the rate from Duluth to Minneapolis.

Q. Well, I say, if there can be no coal brought *via* Duluth except at a much greater expense, there is nothing in this chap-

ter that compels you to reduce your coal rates from Peoria.

A. Not unless there is other competition that is referred to in my other testimony.

Q. Well, the most that that competition could do would be to bring the better quality of coal at an equal rate to the industries which you now charge for an inferior quality of coal?

A. I think that is so.

Q. So that the industry couldn't be injured by it?

A. Every industry is injured where a competitive feature is taken away from it in the purchase of its coal supply in Minnesota.

Q. Not if the taking away of the competition at the same time secures them cheaper coal. Now, if it is fair to assume that the Twin Cities and the Minnesota Transfer formed the point for the concentration and subsequent or immediate redistribution of the coal, the test as to these rates would be made as to what rate you could get upon coal *via* Duluth and what rate you could get upon all-rail from Peoria?

A. I don't testify to the fact that Minnesota Transfer and Minneapolis or St. Paul are a distributing center for coal for the state of Minnesota, because I don't know that that is the fact.

Q. Isn't it the price which is charged by the Burlington from Chicago to Minneapolis which fixes your price *via* Albert Lea to Minneapolis?

A. No, it might fix the rate, but I think the rates are fixed from other groups in Illinois.

Q. Well, the Burlington and other roads. Just exactly the same way that it is the price charged from Duluth to Minneapolis which fixes the price from Ashland and from Gladstone?

A. All the Illinois rates are not fixed with regard to Duluth.

Q. I am not speaking of Illinois rates, I said the lake rates.

A. Well, I understand a good deal of coal is brought up to Duluth by lake for nothing, at times, so I can't take the water coal rate and testify intelligently about it, because I know too much about it, and know that 30 cents is altogether an assumptive figure, that ought not to be permitted to be put in as a part of a rate. That Duluth situation is,one that no traffic man would want to testify on with any degree of certainty, because the vessels there bring up that coal pretty cheap, at times, when they come up for a load of ore back.

Q. You may eliminate the entire lake haul or lake charge and you haven't impaired the situation in any way so far as your argument is concerned.

A. I am not arguing, but simply testifying.

Q. So far as your claim is concerned,—I will change the word "argument." If you eliminate the lake haul and the charge at the dock at the Head of the Lakes, you still have a rate of $1.80 as against a rate of $1.40?

A. Yes,—I am not changing my testimony from the beginning that it is the entirely competitive feature with the industries of the Minneapolis & St. Louis road, and not all of the competition comes from Duluth or from the state of Minnesota.

Q. Mr. Tittemore, is it not true that the whole question becomes a question of competing coal-mines, and that the only result that could be made would be that, if the better class of coal by way of Duluth were hauled as cheaply as you can haul coal from Illinois, the Illinois coal would not compete with it?

A. Well, I couldn't say that; but it is a case of competition from the very beginning to the end. At this very moment the dock people have a case before the different railroad associations in which they are making out a fairly good case that the all-rail rates from Virginia and Hocking Valley *via* car ferries into this section are driving the docks out of business. I can't say to what extent competition enters into it in any one particular item of traffic. There is competition as between the

producers of coal, as between the coal-mines themselves, as between the grades of coal, as between the transportation companies who haul the coal, and as between the industries who use the coal. One mill on our road will have its boilers with a certain grate, and they must have a certain kind of coal. We aim to get that kind of coal for them. I think, as a matter of fact, most of them have their boilers fixed on our road for the very cheapest coal they can get in order to produce the product they sell at the lowest possible price.

Q. Mr. Tittemore, the Illinois coal sells at the mines, you say, from 50 cents up per ton?

A. Yes, speaking of the 50-cent price, that—

Q. Please answer questions. What is the range of prices of the coal at the mine?

A. Well, if you should press me hard for that I should say a dollar up, but if I can qualify that, I want to say that oftentimes they have to get rid of a steam-coal when there is a surplus of it, and oftentimes that stuff is sold for 50 cents.

Q. Would it be fair to say that a dollar a ton is a fair average price?

A. No.

Q. It runs from 50 cents to a dollar?

A. Oh, no; I say from a dollar up. That lump coal would be higher still.

Q. Now, I want to call your attention to a situation: Where is your junction of the Milwaukee road and your road upon the Albert Lea division?

A. Montgomery.

Q. Have you a mill situated at Montgomery?

A. There is a mill there, a flouring mill.

Q. At the present time you deliver to that flouring mill coal from the Peoria mine at $1.40 per ton?

A. Yes, we ship it there.

Q. Now, what is the distance from Duluth to Montgomery?

A. 206 miles.

Q. So that, if we consider the Milwaukee road as having a through haul from Duluth, we can, by turning to Chapter 232, ascertain what the rate would be upon soft coal from Duluth to Montgomery on the Milwaukee road?

A. Yes, sir.

Q. 200 miles—

A. 206 miles; that would be 210.

Q. That would be $1.19, would it not?

A. Yes, sir, $1.19.

Q. Now, that coal has been carried from the mines to the lake at an expense of 90 cents?

A. That is what I understand the rate to be from certain territory to the Lake Erie ports.

Q. And in the absence of some special midnight rate, it has been carried upon the boats to Duluth at an expense of 30 cents?

A. Well, there need be no midnight rate on the lake, for the reason that there is no law controlling it; therefore it is a subject of contract, and I have heard of a 30-cent rate, and I have heard of a lower rate, and I have heard of a higher rate, and I have heard of a great deal of it being hauled for no rate, especially when there is a load of ore certain for the boat going back.

Q. And there is some charge to be made for the cost of handling that coal at the docks at Duluth?

A. Oh, yes.

Q. Is 50 cents a ton a fair amount?

A. Well, I couldn't say. The dockers of coal disagree very much on that. The degradation and all is said by some to be quite high.

Q. 50 cents a ton is a fair statement, isn't it?

A. Well, I wouldn't say that of my own knowledge, but I have heard that the degradation and handling charge amounts to about 50 cents a ton.

Q. Now, that makes the cost of transporting that coal from the mine to Montgomery *via* Duluth, and from Duluth with a continuous haul over the Milwaukee road, $2.99?

A. To tell you the truth, I don't think that the rate on the coal up to Duluth has anything to do with the price; I think that it is fixed by a hand that don't care much what the rate is up to Duluth, say.

Last question read.

A. I don't know of any such rate. I don't want to testify to that rate, Mr. O'Brien. I don't think any such condition exists or is practical, you see.

Q. Well, now, let us assume that such a condition does exist.

A. Well, I can't assume a condition that I know has never existed for the last ten years.

The MASTER: Well, can't you predicate an answer on that assumption? You are not asked to testify to the existence of any such fact, but assuming that to be so.

WITNESS: Well, assuming it to be so, it is so.

Q. Can you explain how that rate would interfere with your rate from Peoria to Montgomery of $1.40, or how it would result in a higher cost to the consumer at Montgomery of the coal used by him?

A. I don't know what the Duluth coal costs before it starts to go to the Lake Erie port.

Q. You mean you don't know what the quality of the coal is?

A. I don't know what the quality nor the price of the coal is. We have got to take the coal on the dock at Duluth because it is sold f. o. b. dock or f. o. b. cars Duluth.

Q. Isn't it fair to assume that that coal is of a superior quality?

A. It is of so much superior quality to the coal that we

sell along the M. & St. L. as to be excluded from our industries because of its high price.

Q. Then it is excluded from your industries because of its high price?

A. We can't get it, there isn't enough of it.

Q. Can you explain how that condition would compel a change in your rate to Montgomery of $1.40?

A. I have not attempted to explain anything but with the rate changed from Duluth to Montgomery to $1.19, based upon the experience of years in the relation of all other port rates, would change it from $1.40 to $1.19. That is all I have attempted to explain or claim. That I do claim. I don't know anything about the internal, domestic relations of coal concerns, dock concerns, or mines. I am taking the experience of years and the rate situation and the rate relation and say if that is followed out, if that relation amounts to anything, if that relation has any bearing upon the cost of coal or the industries on our line, then it will reduce out rate from $1.40 to $1.19.

Q. But why it should do so you can't explain?

A. Yes, I have explained just now. That is the relation.

Q. As explained in your last answer?

A. Yes, the relations of the rates have been fixed and are fixed. You might take, for instance, the docks at Manitowoc; there is a 90-cent rate from the docks at Manitowoc into the Twin Cities.

Q. Now, let us keep nearer home. I want to ask you a question. I wish you would listen to it and see if you cannot answer that question yes or no: When a certain industry, let us say, was established at Montgomery, the cost of fuel at that place was a factor which entered into the question as to whether or not the industry would be established?

A. Yes.

Q. And let us assume that it was found that the price of

coal coming by way of Duluth was prohibitory.

A. All right.

Q. And then the question arose with your road as to what grade of coal could be obtained from the Illinois fields and what your rates would be?

A. That factor would come in at once.

Q. And, as I understand, those discussions and investigations have actually taken place.

A. Yes.

Q. Preliminary to the establishing of an industry along your road?

A. Yes, they always take place.

Q. And after sufficient investigation, it was found that the industry could be successfully operated with coal of the character coming from the Illinois coal-field paying a charge of $1.40 per ton?

A. Well, that is an assumption, because, of course, there was a different relation of rates when that industry was put in there.

Q. The rates were higher?

A. Higher. The same relation, but a higher basis.

Q. And really a larger sum, so there is no doubt about the present rate.

A. As a matter of fact, Montgomery,—I think the first competition was between the La Salle third-vein coal and Duluth coal, and through the management or control of other roads farther south—I think that the rates were reduced probably by the Burlington and Great Northern influences first—and we had to follow the competition.

Q. And the machinery and fire-boxes and grates connected with the industry were arranged so as to permit of the use of this Illinois coal?

A. At that time they would have to be fixed that way.

Q. At this industry which we are supposing to have been

established at Montgomery?

A. Yes.

Q. Now, what is there in the schedule of coal rates provided by Chapter 232 which interferes with that condition?

A. Only as I have explained from the very beginning, that the varied industries, and the varied coal-mines, and the varied docks, and the varied lines of transportation, crossing each other and coming into competition with each other, have brought about a certain relation of rates upon which the business now appears to be successfully and profitably done.

Q. The Montgomery industry uses no Duluth coal?

A. I think not now.

Q. At its present price it cannot afford to use Duluth coal, can it?

A. No,—I guess it couldn't get it, if it wanted to.

Q. You couldn't get it if you wanted it?

A. Probably not.

Q. The reduction provided in the rates from Duluth by Chapter 232 still leaves those rates much higher than the rates upon your coal, does it not?

A. Yes, but Duluth—

Q. Just a moment. You have still the same privilege of furnishing coal to the Montgomery industry at the same price, haven't you?

A. From Duluth?

Q. From Illinois.

A. Well, I don't know whether we have or not if you change the rate to Montgomery from Duluth, Mr. O'Brien. There is where the tonnage is.

Q. But your present rate from Peoria is still much below the entire carrying charges of the coal from Duluth?

A. I don't understand that question. I would answer it if I could.

Q. The rate from the Peoria mine to Montgomery is less

than the rate from the Hocking Valley mine to Montgomery?

A. Yes.

Q. Consequently, there can be nothing taken away from your industry at Montgomery, and the only possible result could be that the proprietors of that industry might come nearer having a choice between the Duluth coal and the Hocking Valley coal and the Peoria coal?

A. Oh, well it would be, after all, a question as between the Illinois coals, at Montgomery, I think.

Q. It comes back to the question of the relation of rates?

A. The relation of rates is fixed. Now, that relation is what I have been talking about, and if changed changes the cost of fuel to our industry, it must if the rate has anything to do with the value of the fuel.

Q. Did I understand you to say that at one time the Minneapolis & St. Louis road was preparing to put into effect this schedule provided in Chapter 232?

A. I think we were preparing to obey the law.

Q. And had you prepared complete schedules for that road?

A. As I remember it, we had them ready for distribution—I don't know but what we had them distributed—and when the injunction was issued we telegraphed our agents not to use them.

Q. Can you produce one of those schedules?

A. I couldn't at this moment. Yes, it seems we issued a tariff, M. & St. L., G. F. O. No. 600–A, (Minnesota Railway Commission No. 90,) which was issued May 25, 1907, effective June 1, 1907. Then I notice that we issued Supplement No. 1, G. F. O. No. 600–A, (M. R. C. No. 90,) on May 31, 1907, effective June 1, 1907, entitled "Cancellation Notice." The cancellation clause in the tariff reads, "Cancel tariff described above, and in lieu of same use former issue G. F. O. No. 15,000, including Supplements 5 and 6, which are hereby restored, to remain in effect until further notice, by order of United States Court."

Q. This tariff-sheet which you produce, dated May 25, 1907, is marked "Local tariff on all freight between stations in Minnesota on the Minneapolis & St. Louis railroad and Iowa Central railway"?

A. Yes, sir.

Q. At the same time was there any tariff-sheet prepared upon interstate shipments other than this?

A. There was a tariff prepared; I think I have said in my testimony, farther back, that the rate-clerks were in session and most of the figures gotten out upon the basis of those that I have testified to here.

Q. Have you that tariff?

A. No, but I think we can produce any figures that we made at the time.

Q. But there was no tariff actually published?

A. No, because there were no penalties for not having the tariff in as soon as this tariff went into effect. This tariff had to go in by law. The law compelled us to put it in, and there was a penalty for not doing it. We gave all of our time to the getting in of this tariff.

Q. I understood you to say in your direct testimony that your representative went to Chicago and checked in the rates.

A. That is true.

Q. And that a complete change of interstate rates was prepared.

A. That is true.

Q. And ready for promulgation?

A. No, I don't think I said ready for promulgation.

Q. That has never been printed?

A. No, it was not printed.

Q. Do you know whether or not any tariff was actually prepared which you contemplated using?

A. Yes, because I was the authority on the road that ordered the rates in.

PAGE CUT OFF

Q. I mean for interstate business.

A. I ordered certain rates in on the M. & St. L. road, just as soon as we could get them printed; but when we found that the rates by the application of certain Northwestern rates out at Redwood and other points would compel us to issue tariffs lower than we thought we would in the beginning, we didn't care to put our higher rates in until the other roads had checked their rates with ours. But I ordered our rates in on the basis of the rates I have testified to all along here, and those rates were approved by the executive of the Company and ordered in.

Q. The Minneapolis & St. Louis railroad is a Minnesota corporation, is it not?

A. I believe so.

Mr. BUTLER: We have that in evidence, Mr. O'Brien. Isn't it Iowa?

WITNESS: No.

Mr. DURMENT: It was consolidated under a Minnesota act?

WITNESS: Yes.

Q. Minnesota is a state which produces a great quantity of grain?

A. Yes.

Q. And at Minneapolis there is a primary market for that grain?

A. Yes.

Q. And facilities for milling it?

A. Yes.

Q. Which do you consider should be the controlling consideration in the matter of establishing rates, the actual cost of the service involved and a fair return upon the property used for that purpose, or the maintenance of rates in other jurisdictions, extending, according to your testimony, from practically the Atlantic ocean to Northern Minnesota?

Question read.

WITNESS: I want that question read again, because that

has got a lot in it.

Question read again.

A. The maintenance of the relation of rates has more to do with the general welfare of the communities served by railroad companies than any other one thing, in my judgment, and that always must be the prime factor in the fixing of rates, and with an experience such as I have had, that has always been my first consideration; because, if I didn't like to do it from my own motives, I was compelled to do it from other considerations. The cost of service I would not want to testify to, because I have always been on that class of railroads where, the competition being fixed, the cost of service was the least that we could give the other railroad companies service for.

Q. In testifying then—

A. Let me say, as to the fair return,—I don't know just exactly what it means. When it comes to any railroad I have ever been with, they have never earned a fair return.

Q. Well, they are going to take testimony of financiers on that. Then, in testifying in this case for the purpose of establishing the unfairness of the schedule of rates prescribed by the order of the Commission and also by Chapter 232, you have based your conclusions principally, if not entirely, upon the fact that you claim the result of the enforcement of those rates would be to disturb the relation of rates generally?

A. Yes, lower rates generally, and we would have to meet that competition, and in the depleted state of the Minneapolis & St. Louis Railroad, it couldn't stand it.

Q. And you do not claim to have come to a conclusion upon the question as to whether or not the price allowed for the particular service by these orders and by the act of the legislature, if confined to that service, would or would not be remunerative?

A. I have considered this: that the rates provided or ordered by Statute 232 would not pay for a reasonable service on

the Minneapolis & St. Louis Railroad. By that I mean that the Minneapolis & St. Louis Railroad could not afford, under the rates ordered by Statute 232, to give a service that would accommodate, or anywhere near accommodate, the people living along its line in the state of Minnesota.

Q. Well, your conclusion, then, is based either on the disturbance in the relation of rates which would result, or the fact that these rates would, in and of themselves, be confiscatory?

A. The rates, in and of themselves, combined with the tonnage on the Minneapolis & St. Louis road, would be confiscatory. I am testifying now strictly respecting the Minneapolis & St. Louis railroad; they would ruin the Minneapolis & St. Louis railroad.

Q. Those rates, in and of themselves, then, as applied to that traffic, you claim would be confiscatory without regard to the relation of rates?

A. Yes, I believe that any way that you want to take it you can confiscate,—that is, you can destroy any net revenues of the Minneapolis & St. Louis Railroad.

Q. Then, of course, you have come to a conclusion as to the cost of the service required before you say that?

A. Yes, I could come to that in the case of the M. & St. L. by just reading its annual report.

Q. Have you prepared any statement as to the cost of the service?

A. No, I have not prepared any statement with relation to the cost of the service.

Q. When you were upon the stand last, you gave some information, and stated that you were working out certain tables, with reference to the cost of the service; have you done so?

A. I don't think that I said I was working out certain tables; I was getting certain information to confirm certain

statements that I had made, and I think that we have done that, although I haven't got it in form for an exhibit.

Q. If you have come to any conclusion as to the cost of the service, Mr. Tittemore, I would be glad to have you state it.

A. My testimony on that point was with regard to the cost of local and through service.

Q. Yes.

A. I find that taking the actual handling of local trains Nos. 75 and 76 in both directions, between Morton and Watertown on the Pacific division, on October 19th and 20th, for instance, a distance of 123 miles, the cost of the trainmen service for the run of No. 75 on October 20th was $23.48.

Mr. BUTLER: Which is the through and which is the local train?

WITNESS: I am only speaking of these local trains now. Train No. 76, in the opposite direction, on October 19th, $32.81. It took train 76 twenty-one hours and fifteen minutes to make its run, while it took train 75 fourteen hours and five minutes.

Q. Are these both local trains?

A. These are both local trains.

Q. All right.

A. The schedule time of No. 76 would be eleven hours and a half and of No. 75 eleven hours. Then we take local train 42, of October 28th, the wages paid train crew, $34.08; distance 107 miles; the time consumed in the trip, seventeen hours and forty minutes, while the schedule time on the card is twelve hours and twenty-five minutes. In that case I found that the overtime necessary prevented the first crew from going through and it was necessary to use two crews instead of one because of the sixteen-hour limit.

Q. Explain what you mean by the sixteen-hour limit.

A. Well, the law forbids you to keep a crew out over sixteen hours.

Mr. DURMENT: That is a United States law?

WITNESS: Yes; you are compelled to let the crew lay up. Now, take through trains 95 and 96, on the Albert Lea division—95 of October 29th and No. 96 of October 30th. These trains do no local business and stop only at railroad crossings or to coal and water, making five to eight stops over the line between Albert Lea and Minneapolis. Train No. 96, of September 30th, for instance, was five hours and fifty-five minutes en route, and train 95 of October 29th was six hours and fifty minutes en route, the schedule time of these through trains (say 95) being six hours and forty-five minutes and No. 96 five hours and fifty-eight minutes. We paid to the engine and train crew for those two trains on those days $16.43 in either direction. Take train No. 66. The through train on the western division, on October 16th, was seven hours and forty-five minutes en route, the schedule time is seven hours, the cost of the train and engine crew $15.35. A comparison of train-earnings of local trains *versus* through trains shows as follows: Train earnings for train No. 76, on the date indicated above, was $392.49; train No. 75, $405.37; train, No. 42, $309.83. The through trains on dates shown show train-earnings as follows: No. 66, $568.72; No. 96, $404.60; No. 95, $612.86. That shows that the increased earnings of the through trains, M. & St. L. road, was, in one case, one hundred per cent more than the local trains, and in the other cases, in one case about 80 per cent more and in the other case about the same. That is, there was one local train and one through train which earned within a dollar of each other.

Q. You have not the total tonnage for each class of trains?

A. No, I haven't the information.

Q. You did not ascertain the other expenses of moving the freight?

A. No, I didn't ascertain all of the expenses, because some of them cannot be ascertained.

Q. You made no attempt to ascertain more of the moving

of the freight other than the wages of the men?

A. The wages of the men was the principal thing and the cost of the fuel. The water supply I testified to previously, and I don't remember what it was, but I would not want to change it. Everything that I have looked up since confirms my statement.

Q. I don't remember that you did testify to the fuel.

A. Yes, I did—that it would take a certain percentage more fuel to run a through train. That was based upon an investigation made at the time.

Q. You did not have any actual figures?

A. I think my testimony gave good reasons for the faith that was in me.

Q. Didn't I understand you to say that you practically had no through trains on the western portion of your road?

A. It is according to what you call a through train. The western portion of our road, a large portion of it, is entirely local. They don't get enough traffic off of there to wad a shotgun with, let alone talking about two kinds of trains. All you get you can carry in one train a month.

Q. Did you not say that on the only division of the Minneapolis & St. Louis—you didn't say it so vigorously because you were not with such a big road at that time—but didn't you say that the only division of the Minneapolis & St. Louis road which had any through freight upon it was the Albert Lea division?

A. Yes, and as a railroad man that is all I would want to testify to, although the superintendent—

Mr. BUTLER: Do you mean through freight or through trains?

Mr. O'BRIEN: Through trains.

Mr. BUTLER: You said freight in that last question.

WITNESS: Through trains.

Mr. O'BRIEN: I meant through trains.

A. Of course, you take a train traveling from Minneapolis to Morton, Mr. O'Brien, that might be called a through train in the time-card because it would have freight in it going to points west of there, but the traffic thins out as you go west there, and I should not consider that the Minneapolis & St. Louis road had any so-called through trains on any division of its road but the Albert Lea division.

Q. That is what I wanted to ask you.

A. That is the way I feel about it.

Q. While there is through freight upon the line of your road running west from Minneapolis, it is carried in trains which do the local business?

A. Yes, on account of the economical features I have spoken of; it hauls either.

Q. The result is that all of that freight is carried under what might be called the local conditions?

A. Not all of it, because we will say, there are two kinds of local trains; there is the switching train, say, the train that does the local work, that takes twice as long to go over the division as the other local train that hauls freight for farther out on the line. For instance, a train starts from Minneapolis in the morning to go to Watertown; she comes from here to Morton, she switches all day; now, in the evening another train comes through here and does not take much freight for these points along here but the freight for points from Morton to Watertown is left for the night train, so that the early day train doing the switching along here relieves this through train and lets her get over here quicker and cheaper with the traffic for west of Morton than the train can haul it and do the switching at the same time. The local conditions bring about the switching. For instance, the train leaving Minneapolis and going to Morton in the morning may have to switch cars all the way out and practically earn nothing, she is a dead loss; but she sets cars for elevators that the next local train

may haul full of wheat or flour or something else—flour, for instance, into Minneapolis.

Q. So that there are freight trains of different character upon the western line of your road?

A. Yes.

Q. From Minneapolis westward?

A. That is it.

Q. Now, are there any branches upon the road in which the character of the freight and the method of operating the trains is the same?

A. I don't quite understand the question, Mr. O'Brien.

Q. Well, take, for instance, the branch of your road from Winthrop south, are there any through trains upon that branch?

A. Well, you might call it a through train because there we meet the competition of the Northwestern railroad and give a service that is not always warranted by the traffic we get.

Q. Is there a through train upon that road distinguished from the branch line?

A. The time-card may call them through, but I am not calling them through trains.

Q. Well, are there both local and through trains upon that branch?

A. I think there are two different kinds of freight trains on the time-card on that line.

Q. Are there two kinds of freight trains operated?

A. Yes, I think so, between New Ulm and Winthrop or between New Ulm and Minneapolis, but when you get south of New Ulm, where the line is a dead loss and would not pay for the operation of one train if it carried all your passengers and all your freight, that is a different proposition. The line south of New Ulm doesn't earn a thousand dollars in freight earnings per annum gross.

Mr. BUTLER: Per mile, or over the whole line?

WITNESS: Per mile. You couldn't support much of a varie-

gated freight service on that.

Q. What character of freight trains are operated upon that branch?

A. I don't know what the character of them is. For a long time I think she ran down one day and came back the next, and we had so many competing points there that I think after I was made traffic manager of the M. & St. L. I ordered a daily service, except Sunday, each way, to accommodate the people, because I think a railroad at least has got to perform some of its charter functions even though it is a poor one.

Q. You mean the charter or the Company?

A. The charter, I guess. Well, take working time-table No. 2, in effect Sunday, May 3, 1908, I notice that there is a local freight leaves Winthrop at 5:30 in the morning and gets down to New Ulm at 8 o'clock. That is No. 64. The same numbered train then continues on down to Estherville, Iowa. Now, that is the only freight train on that piece of railroad southbound. Now, it has a corresponding train northbound.

Q. Then we have found a section of your road upon which there is one freight train each day each way?

A. Except Sunday.

Q. And that train carries the entire freight upon that branch?

A. Yes.

Q. Do you know whether or not the operating expenses of that branch are kept separate from the other portions of the road?

A. I think they have a system of keeping the branch separate; I couldn't testify to that, because I am not the accounting officer.

Q. You have just said that the traffic upon that branch was very thin?

A. That I know.

Q. And the service is, as compared with the traffic, very expensive?

A. Very expensive because of the thinness of the traffic, Mr. O'Brien.

Q. Well, I don't care what it is on account of, I ask you if that is what you said—that the service as compared with the traffic was very expensive.

A. Yes, I did say that. That division of the road, Mr. O'Brien, that we have just been talking about, known as the Southwestern division—

Mr. BUTLER: Between what points?

WITNESS: The Southwestern division is from Winthrop to Storm Lake, Iowa,—has a freight earning of $957.72 a mile—something less than a thousand, as I testified a few moments ago. Now, as a traffic man, all I would take would be the mileage that that freight train runs, for instance, and I would say that it would cost so much a mile, and I would make a deficit out of it very quickly.

Q. Now, Mr. Tittemore, we have only got ten minutes more, and if you will just make the answers as short as possible,—I will repeat, the traffic upon that division is very thin?

A. Yes.

Q. The service as compared with the traffic is very expensive?

A. Yes.

Q. The relative cost of the movement of trains upon that branch of your road of necessity would be higher than upon any other portion of the road?

A. There may be some portions thinner in earnings; I believe I could find one, but I won't stop.

Q. All of the freight moved on that road is moved under what would be called local conditions?

A. I think a majority of it is, Mr. O'Brien, except the—

Q. Isn't all of it?

A. No; the Albert Lea division is governed largely by other connections.

Q. Mr. Tittemore, if you have only one train upon the track that moves backwards and forwards, north and south on that track, which carries all the freight, it is all moved under the same conditions, isn't it?

A. Yes, but that wasn't your question before.

Q. My question was whether or not all the freight was carried—

A. On the road.

Q. But I am talking of that division.

A. All right, of that division.

Q. All of the freight upon that division is carried under the same conditions.

A. Yes.

Q. And those conditions are local conditions?

A. Well, I am going to say yes although I don't think that is exactly so, because you have so many competing points.

Q. And it is under the most expensive conditions with reference to the amount of freight carried?

A. Yes, the most expensive conditions are fixed by a fixed train service with a thin tonnage.

Q. And the cost of train movement upon that division can be absolutely ascertained?

A. Oh, no. No.

Q. Why not?

A. With relation to the traffic, do you mean?

Q. I am not talking with relation to anything else. I am talking of the amount of dollars and cents paid out in a year for the operation of trains upon that road on that division.

A. You could come pretty close to it.

Q. You could come pretty close to it, you could come approximately to it?

A. Yes, you could.

Q. If therefore you take the total cost of moving trains upon that division and apply it to the actual freight moved upon

that division, you would arrive at the very highest cost of moving local freight upon your road, would you not?

A. That is pretty hard to say, Mr. O'Brien, unless you get that relative business in there.

Q. Well, you won't get the "relative business" in there if I can help it. (Laughter). And if I can, you will answer that question yes or no.

A. Well, I wouldn't want to answer that yes or no.

Q. If you have a division of your road extending from Winthrop in Minnesota, to Storm Lake, in Iowa, a distance of much more than 100 miles, and upon that division of your road all of the freight is transported under the same conditions and those conditions are the conditions which pertain to hauling what has been designated as local freight, and if those conditions upon that freight division are peculiarly expensive, as you have described, and if you have in your possession the total cost of moving trains upon that division, can you not give to this Court the highest cost of moving freight locally upon the Minneapolis & St. Louis road?

A. No, because, as a matter of fact, in its physical construction it is the best piece of railroad the Minneapolis & St. Louis Company owns, and it can be operated cheaper than any other part of its railroad; but if you take it with relation to its traffic, you have got something else, because every one of those local trains hauls out freight *via* junction-points for which the M. & St. L. receives an abnormal amount of money for a very small amount of service. Now, you can't take that on the southern division of the road and make a comparison that would be fair.

Q. Mr. Tittemore, that has absolutely nothing to say to the question that I ask.

A. Oh, yes, it has.

Q. It has nothing to say to the question as to whether or not the Minneapolis & St. Louis road as a system obtains a

benefit from another haul of that freight or not, but here is the situation: what is the distance from Winthrop to Storm Lake?

A. 157 miles.

Q. You have a branch road extending from Winthrop to Storm Lake, a distance of 157 miles.

A. Yes.

Q. All of the freight moved upon that division is moved under the same conditions?

A. Yes.

Q. The traffic upon that division is very thin?

A. Yes.

Q. The service upon that division is, as you have said, excessive for the amount of traffic upon the division?

A. Yes.

Q. Therefore, the cost of train movement upon that division must represent the highest cost per ton of train movement for any class of freight upon your road?

A. No.

Q. You deny that?

A. I deny that.

Q. Why?

A. Because, as I have stated, the line from Winthrop to Storm Lake was built for a through line to Omaha; it was started for a through line and was built expensively, to be operated cheaply. I think that their grades are very low. Now, if you were to take the southern division—

Q. No, let us just keep where we are.

A. Well, if you wanted the division that will show, I will give it to you, but I believe—

Q. Then, do you claim that the freight upon that division is moved at less expense, considering the thinness of the traffic, than it is upon other divisions of the road?

A. So far as the grade is concerned, yes; but I can't segre-

gate the cost of the service from the service itself or from the freight. We could haul three times as much freight on the Winthrop to Storm Lake line, for instance, in these trains, as we could haul in the same class of trains on some other division of the railroad.

Q. But you don't haul half as much?

A. No.

Q. Isn't it the fact that what you do haul is hauled at a higher expense?

A. Well, it is not hauled at as high an expense as it is on one other division of the road that has grades twice as heavy.

Q. What other division of the road do you refer to?

A. I mean the southern division of the road.

Q. Do you mean the Albert Lea division?

A. I mean the line from Albert Lea to Angus, down through the hills.

Q. Where is Angus?

A. Angus, Iowa,—north of Des Moines.

Q. How far?

A. About fifty miles.

Q. How much of that line is in Minnesota?

A. No part of it; just a few miles from Albert Lea to Twin Lake.

Mr. BUTLER: Well, there is some, isn't there? Albert Lea to Twin Lake?

WITNESS: Yes.

Q. How far is Storm Lake from the Minnesota line?

A. About 78 miles.

Q. Now, with the exception of the division from Albert Lea to Angus, do you know of any division or branch of the Minneapolis & St. Louis road in which the relative cost of moving freight is greater than upon the division from Winthrop to Storm Lake?

A. Well, as I have stated, I believe that for anything you

have to do on the Southwestern division, you can haul it cheaper than you can over any other division of the road, because I think the road is the best part physically of their railroad unless possibly the line from Minneapolis to Albert Lea. It is entirely a question of density of traffic; that is what I am trying to say.

Q. What is that?

A. It is entirely a question of density of traffic, that is what I am trying to say. The Minneapolis & St. Louis road has no traffic.

Q. Well, if it is a question of density of traffic, we have, in taking this division from Winthrop to Storm Lake, taken the best example for your contention, have we not?

A. Yes, if all other conditions were equal.

Q. Then it is not entirely a question of density of traffic?

A. Well, I don't believe we understand each other well enough for me to go ahead and testify. I do believe that the cost of service in the operation of a railroad depends entirely upon its density of traffic.

Q. Do you claim that, in spite of the thinness of the traffic upon that line, you carry freight there at a less cost per ton mile than you do in any other portion of the road in the state of Minnesota?

A. I don't know about that. The rate per ton per mile—

Q. Don't you know that you do not?

A. No, I don't.

Q. Don't you know that of necessity the cost of moving freight upon that division per ton mile must be more than upon any other portion in the state of Minnesota?

A. No, I don't know that, Mr. O'Brien. I know because of its very thin earnings that it can't earn anything net. I wouldn't have to look at any report to know that.

Q. Is there any other branch of the road that that is true of in Minnesota?

A. I couldn't say. Your main line is the best part of the M. & St. L. road that is in Minnesota.

Q. Is there any other portion of the line in Minnesota of which it is true that it cannot earn anything net?

A. I don't know; the Auditor would have to answer that.

Q. If there is no other portion of the line as to which that is true, we would then have found a portion of the line upon which the service was the most expensive, would we not?

A. Well, I believe that is so from the way you look at it, but I don't look at the service the same way you do. I don't segregate my service nor my expense from my traffic, and, after all, the per train tonnage and the per car tonnage is the unit, you know, of profit, not the per ton per mile nor the per ton cost.

Q. Mr. Tittemore, you can tell from the books of the Minneapolis & St. Louis what the total cost of train movement is upon the branch from Winthrop to Storm Lake, can you not?

A. I believe that that can be determined.

Q. You have already stated that the service furnished there is much more than sufficient to carry the traffic.

A. Well, let us put it now just as I mean it: We could accommodate twice the traffic with the same service.

Q. You could accommodate twice the traffic with the same service?

A. Yes.

Q. You have already stated that the traffic there is thinner than it is upon any other portion of the line in Minnesota.

A. Yes, I can't find anything thinner anywhere.

Q. Local service is admitted by everybody to be more expensive than through service?

A. Yes.

Q. All of the service upon this line is local service?

A. Yes.

Q. Is it not true, then, that the cost of moving freight upon

that division must of necessity be relatively greater per ton mile than the cost of moving any freight upon any other portion of the line in Minnesota?

A. I wouldn't say that unless I saw the figures.

Q. Can you imagine that that conclusion is not irresistible?

A. All I can imagine about that division is that it can't pay on any such earnings.

Q. And if, as a matter of fact, that branch does furnish the highest cost of service of any portion of your line in Minnesota, the cost of service per ton mile upon that branch could readily be applied to the service upon all portions of the road, could it not?

A. I wouldn't say that. I don't like to have that branch which was an abortion in its conception, the building of it and everything, used as a—I don't like to testify and use it as a precedent, because it is not a precedent.

Q. Well, now, if you could overlook your dislike for that branch in and of itself, without—

A. Well, that I won't say.

Q. —without any really great mental disturbance, I wish you would answer the question.

A. Well, I can't really answer the question, because I think the branch—she doesn't pay, and I don't think that the traffic on that branch as it is, and all the conditions surrounding it, that it is a fair example to use, and unless I saw the figures you might get me to testify to a thing here that wouldn't be exactly right and correct, and I am trying to avoid that, because I don't think it is a fair example of railroading.

Q. That is, you don't think that any system of mathematical calculation should be applied to those rates until you ascertain how they would show up?

A. No, that wasn't what I meant, Mr. O'Brien. I mean that that road is a road built through a territory the rates of which are all fixed say, towards Chicago; you have got a road

across the current of traffic; you don't get anything for it; it was not built for the purposes for which we are using it, and I don't like to testify and have that used as a precedent as against some other decent branch of road.

Q. Well, if all those things are true, I am afraid we are the ones that ought to object to using it. Now, let us say that here are four parallel lines of road, numbered 1, 2, 3 and 4; No. 1 has two classes of freight, through and local, one of which costs more than the other, but we don't know; No. 2 is in the same situation; No. 3 is in the same situation; No. 4 has only one kind of freight, local freight; there is less local freight on 4 than there is local freight on 1, 2 or 3, and, we will say, the service on 4 is relatively better for the amount of freight than it is on 1, 2 or 3; if we find the total cost of the train movement upon 4 under those conditions, we find at least the cost of the local freight on 1, 2 and 3, do we not, the only error is that it must be greater?

A. Well, you see—

Q. Isn't that true?

A. No.

Q. That isn't true?

A. No.

Q. Why?

A. Well, because take up here on 2 and 3, if you will, you may have to use an entirely different kind of power; you may down here be able to use a small engine, you have got light grades and all that sort of thing; you can have your unit of expense down here very much less than you may have it on 2 and 3.

Q. Very well, then, we will eliminate those questions. We will eliminate the difference in the roadbed and assume that the roadbed is the same and that the character of the trains used is the same, the engines of the same hauling power, cars of the same capacity, engineers and brakemen of the same wages, and then what do you say?

A. You would get the same result if everything was the same.

Q. That is, the cost of the entire freight on track 4 would give you the cost of local traffic, would it not, on 1, 2 and 3?

A. Well, I doubt it. There is such a difference in the traffic, I don't believe—I would like to answer your question because if that is true, I would like to know it, and I don't believe, Mr. O'Brien, I get the exact purport of your question. If I did, I would answer it. I don't think there is any comparison.

Q. Now, Mr. Tittemore, I will state that to you again: We will assume four railroad tracks parallel and of the same character; on track 1 there are two kinds of business, through and local, one costing more than the other, and the same is true of tracks 2 and 3; when we come to track 4, we find only one character of freight hauled upon that track; we know the total cost of carrying the total freight upon that track, and all of that freight is carried as local freight or what you might call local conditions,—

A. In local trains?

Q. In local trains,—would not the cost of carrying all the freight upon track 4 give you, all other things being equal, a proper basis upon which to determine the cost of local freight upon tracks 1, 2 and 3?

A. Well, if the conditions were all the same, yes.

Q. Yes.

A. Then it wouldn't be of any value.

Q. If the conditions were the same, that would furnish you a proper basis upon which to compute the cost of carrying local freight on tracks 1, 2 and 3, wouldn't it?

A. By jiminy, I don't see it,—I don't.

Q. Mr. Tittemore, the books of the Minneapolis & St. Louis Railroad Company show the total cost for train movement upon the branch from Winthrop to Angus, do they not?

A. I think so.

Q. And they show the total tonnage upon that branch, do they not?

A. I think so.

Q. It is a mere matter of computation to ascertain the average price of hauling a ton of freight one mile upon that branch, is it not?

A. They can find out from the books what it would cost.

Q. Now, there are other items, such as general expenses, maintenance of way and equipment, that cannot be ascertained?

A. Not exactly.

Q. With the same degree of exactness?

A. That is right.

Q. But so far as the movement of freight is concerned, the cost of moving freight, the average of that can be determined to a mathematical certainty?

A. I believe so, very close.

Q. Is it not true, that the freight upon the division from Winthrop to Storm Lake is moved at a relatively greater expense for train movement than any other freight upon the line of the Minneapolis & St. Louis railroad in Minnesota?

A. I don't know.

Q. Have you not just said that the traffic is so thin upon that road that the entire service is maintained at a loss?

A. Yes, I have said that that road is a radical defect and that it don't warrant any service.

Q. Do you know of any other portion of the line in Minnesota upon which freight is moved at a greater expense than upon that branch?

A. Well, I don't know of any place where it is moved at a greater loss, but I can't say as to the expense because the quantity of traffic and the quality of traffic, for instance, as between grain and coal and silk and livestock and all that,—I can't

tell the relation there, you see, because I haven't the figures before me.

Q. What makes the loss?

A. The expense. The fact that you have to run a train and get nothing in it.

Q. The expense, isn't it?

A. Yes; yes, the expense of running a train with no income.

Q. It is the small return as compared with the large expense which makes the loss, isn't it?

A. Yes, any expense is large where you have no income.

Q. You can't increase the loss without increasing the relative expense?

A. I don't know.

Q. If you would double the train service upon that division and double the cost, you would increase the loss, wouldn't you?

A. Yes, if we didn't treble the traffic.

Q. If you would hold only the same traffic and double the train service you would increase the loss, would you not?

A. Yes.

Q. If you maintained the same train service and lost half of that traffic, you would increase the loss, wouldn't you?

A. Yes; there is where the relation of traffic to expense comes in. I am clear on that.

Q. Therefore, when you find the portion of your road in which you say all of these conditions combine to produce the highest expense ratio, you have found a place where the cost of moving freight is the most expensive?

A. Relative to the tonnage handled; but, Mr. O'Brien, I want to understand you, and if that is right I want to say so, but in going from New Ulm to Storm Lake we go over a road that has five-tenths of one per cent grade, there is a twenty-one-mile tangent in one place; she is a straight road, she is a heavy-railed road and she is a light-grade road. Take a train from Winthrop to Storm Lake over such a railroad and send

her down half-loaded, she makes a run, but the loss isn't nearly so much as it might be on some other division of a railroad where the same train and the same tonnage went over that division and the grades were all a maximum of one per cent. That is what I want to say, and when you ask me the question as to whether that is the division of the road in Minnesota that would show the largest percentage of cost to traffic, I can't answer it exactly for the reason that as between a division of the Minnesota traffic and the Iowa traffic passing over the same division of the road I can't tell, I don't know that it would be fair.

Q. Then the only doubt in your mind is whether or not the adaptability of the roadbed overcomes the thinness of the traffic?

A. As compared with some other division.

Q. As compared with some other division?

A. That is one of the things.

Q. That is the only doubt in your mind, I say.

A. That is a grave doubt; that is not the only doubt.

Q. Is that the only reason you say you can't answer this question?

A. I don't believe it is within the power of man to answer that question.

Q. Well, is that your reason?

A. That is one of the reasons.

Q. What other reason have you? Let us see if we can agree on anything.

A. Well, I am not going to answer a question I don't know about.

Q. Have you any other reason?

A. Yes, I have a reason.

Q. What is it?

A. I don't think it is a fair criterion at all.

Q. Is that the reason? That isn't the reason why you

don't answer my question yes or no?

A. Yes, it is; it is not a fair criterion.

Q. Then because it is not a fair criterion you propose not to answer my question?

A. No, sir, Mr. O'Brien.

Q. Is that what you mean?

A. No, sir, Mr. O'Brien, I want to answer your question, but I don't want to put my railroad company into a hole by making an answer that I don't know about. If I knew just what you want and I could answer it, I would answer, just as sure as shooting, but that division is not a fair criterion; you can twist it around so it will prove anything you want to anyway, and I don't want to get into that too deeply, because the accounting officer ought to be able to give you these figures exactly, and I don't want to come in here with a figure that is based upon a personal judgment of mine and which I have used as a traffic man in order to fix my profits or my losses and have him come in with direct testimony and exact figures and show that I was off in my judgment. Now, that is one of the reasons.

Q. We can probably relieve you from that if we don't ask you to give any figures, Mr. Tittemore. Then you have no objection to answering the question if you can because it is an unfair question and you are not trying to evade it on that ground?

A. No, sir, I am not.

Q. Well, now, let us start over again. Let us assume that the branch of the road from Winthrop to Storm Lake in its physical characteristics is identical with the average roadbed of the Minneapolis & St. Louis Railroad in the state of Minnesota. Will you do that?

A. We will assume that.

Q. Assuming that and considering the thinness of the traffic upon that branch and the superfluous service which you have

described, is it not true that the average cost for train movement upon that branch of moving freight per ton mile, must of necessity be as great as the average cost of moving all of the local freight upon the Minneapolis & St. Louis road in Minnesota?

A. Well, my judgment would be that it would be, but I don't think that that—I answer that question that way because I want to be fair about it, and I don't—

Q. There is no way of escaping that conclusion, is there, Mr. Tittemore?

A. Only by looking at the figures and finding that I am wrong.

Q. If we find a portion of the road in which the freight is moved under the most adverse conditions, we have found the highest cost of moving freight upon the entire road, have we not?

A. Well, the adverse conditions there relate entirely to the thinness of the traffic; that is, the enforced service; that is, the very bad condition there. Otherwise—

Q. It doesn't make any difference about whether it is enforced or not, but if we find a portion of the road in which the freight is moved under the most adverse conditions, we must find the highest cost of moving freight, mustn't we?

A. But all of the conditions are not adverse.

Q. If we find a portion of your road, whether it is this particular branch or not, upon which freight is moved under the most adverse conditions, we must have found a place where the cost is the highest?

A. I should think so, yes.

Q. What is the character of the traffic from Albert Lea to Angus?

A. Oh, such traffic as any granger road would carry livestock, grain and coal. It is a farming country.

Q. Is the trackage upon that line dense or thin?

A. The traffic is—well, it is pretty thin.

Q. What is the tonnage per mile on that road, on that branch?

Mr. BUTLER: Tonnage or earnings?

WITNESS: I have it in the earnings. Your freight earnings on that line per mile would be $2,114.71.

Q. As compared with $900—

A. As compared with $957.72 on the other.

Q. Is there more than one class of freight trains operated upon that southern division?

A. No, I think they have one train each way daily now, except Sunday; the train, for instance, leaves Albert Lea at 6:30 in the morning and gets down to Fort Dodge at 4:30. Now, there is no train then runs on from there to Angus, but the next morning there would be a train leaving Fort Dodge about 8:30; it leaves the shops at 6:30 and gets into Angus at 12.50.

Q. All of those trains are peddling trains?

A. Yes.

Mr. DURMENT: One each way?

WITNESS: Yes.

Q. So that all of the freight upon that division is carried under conditions described as local?

A. Yes. There is one item of traffic on that division, though, that differentiates it from the other division.

RE-DIRECT EXAMINATION.

By Mr. BUTLER:

Mr. BUTLER: In connection with the cross-examination of this witness with respect to the average ton-mile cost on the divisions referred to in the last part of Mr. O'Brien's examination, we desire to call the Master's attention to the testimony of this witness given upon the introduction of Exhibit 21, to be found in the twentieth day's hearing, beginning at page 926 (transcript) and following for several pages—a good many pages, perhaps.

Q. What item of traffic differentiates the Southern division from the Southwestern division?

A. A large amount of cement, gotten out at Fort Dodge.

Q. Heavy material?

A. Very.

Q. Moving at low cost and upon low rates comparatively?

A. Yes.

Q. I call your attention to Exhibit 21, relating to the merchandise rates and classes, and desire to ask you if upon the Southwestern division these twenty-two subdivisions of the classes defined in the Western Classification are carried?

A. They are all carried on that division.

Q. And are the tonnages moved at the various rates and subdivisions of the Western Classification uniform, or do they vary? that is, is there the same amount of tonnage of each particular kind?

A. Oh, it varies; it varies greatly.

Q. And with respect to distance hauled?

A. Yes.

Q. And if confined to the class matter alone, there are twenty-two different rates allowed?

A. Yes, sir.

Q. On the basis of the Commission's order?

A. Yes, sir.

Q. And that corresponds with the classification touching the matter of rates made by the Western Classification association or board, whatever it is, that applies all through this part of the country?

A. The same as made by the Western Classification committee.

Q. Is it also true, or are you able to form an opinion, as to whether the cost of moving each class of goods that takes a different rate under the Western Classification varies according to the conditions, length of haul and the like, or whether

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the cost is the same as to less than carload and carload, and so on?

A. It differs in accordance with the traffic, the distance carried, and all of the other conditions under which the freight is carried.

Q. Now, with respect to the classes which were created by the act of the legislature, Chapter 232, known as the commodity-rates act, I think there are seven such classes; does freight covered by each such state classification move on some part of the Southern and Southwestern divisions?

A. It does.

Q. Varying in tonnage?

A. Yes, sir.

Q. In distance hauled?

A. Yes, sir.

Q. In rates allowed?

A. Yes, sir.

Q. And cost of doing the business?

A. Yes.

Q. Can it be said, or do you know whether it can be determined, whether or not there is any parallel in such conditions as respects the kind of traffic, the amount of tonnage of each, the amount of expense of each per mile of track on the Minneapolis & St. Louis road or any other branch of any other road anywhere?

A. I don't think there is. I don't think it can be determined.

Q. The figures which you gave as the freight earnings per mile of track, something less than a thousand dollars on the Southwestern division,—do they include both the state business and the interstate business?

A. Yes, sir.

Q. Are you able to determine how much of each?

A. No; but I don't believe the local business in Minnesota

would amount to—well, I declare, I don't believe it would amount to twelve per cent,—to fifteen per cent, anyway.

Q. Or the character of the freight, as one compared with the other, or the distance hauled, as one compared with the other,—is there a parallel between those elements or considerations?

A. No.

Q. And the figures on the Southern division down to Angus included both state and interstate business?

A. Yes.

Q. And you are not able to tell the tonnage, or earnings, or cost of either?

A. Well, there is such a small proportion of that division in Minnesota that I don't suppose there is one per cent of the traffic in Minnesota.

Q. The local or state business in Minnesota is, you think, almost negligible?

A. Yes.

Q. On the Southern division?

A. Yes.

Q. I take it the cost of hauling the low-grade stuff, that is the differentiating item there, varies a great deal from all and from each of the twenty-two items shown in Exhibit 21?

A. Well, it would cost you almost as much to handle twenty-five carloads of hats and caps as it would to handle twenty-five carloads of cement, for instance, for a certain distance, and the earnings on the cement,—the gross earnings and the net cost of the management of the maximum loading in your car and the ability to get maximum loading in your train would make the cement business a profitable business where the other would be carried at a loss.

Q. The weight would be very much different?

A. Oh, the class rates are too low, comparatively.

By Mr. O'BRIEN:

Q. There is no economy of cost in crossing a state line, is there? so far as the actual service is concerned.

A. No.

Mr. BUTLER: That will not be claimed, Mr. O'Brien.

Q. And the distinction in the cost of freight is the distinction between what should be classed as through freight and what should be classed as local freight, isn't it?

Mr. BUTLER: The classes being equal, you mean?

Q. Isn't it?

Mr. BUTLER: And other things being equal?

WITNESS: Everything being equal, that is true.

Q. Other things being equal?

A. Other things being equal.

Q. The difference in the cost being whether it is through freight or local freight, the question as to what length of haul should make freight considered through freight, does not depend upon whether it is interstate freight or state freight, does it?

A. It does with the M. & St. L., because the proportion of the rate, Mr. O'Brien,—the proportion of the interstate rate might be more,—don't you see?

Q. Mr. Tittemore, that has nothing to say to it, I am talking of the cost of the service, and I think you must understand I am speaking of that.

A. No, I didn't understand that.

Q. It is conceding that local freight, so-called, costs more than through freight.

A. Local conditions and local freight cost more than through freight.

Q. And there is such a thing as local interstate freight, and that local interstate freight costs more for transportation than does through interstate freight?

A. I believe so, because of the conditions under which it moves.

Q. And local interstate freight costs more to transport than through state freight does?

A. Now let us see.

Mr. BUTLER: Other things being equal again?

Q. Other things being equal, the difference in the cost is whether it is through freight or local freight?

A. In through trains or local trains, yes.

Q. So that when we are talking about the cost of operation or of train movement upon these branches of your road, the southern branch or the branch from Winthrop to Storm Lake, it makes no difference whether the freight there hauled is interstate freight or intrastate freight, it is all local so far as that division is concerned, isn't that true?

A. Yes.

Mr. BUTLER: I want to say that we don't expect to call Mr. Tittemore again, but there may be some matters that could properly have been taken up with him in a second redirect examination, but by reason of his removal from this neighborhood and employment elsewhere we can cover it, perhaps, as well by other witnesses.

Adjourned until Tuesday, February 9th, at 10 A. M.